

Exhibit 71:

Steven Beatty Deposition Transcript and
Deposition Exhibits 30 - 32



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Transcript of the Testimony of **Beatty, Steve**

Date: June 6, 2023
Volume:

Case: JOHN DOES A, B, C, D, E, F, G, H, et al. v. GRETCHEN WHITMER,
Governor of the State of Michigan, et al.

Printed On: June 20, 2023

Beatty, Steve
6/6/2023

<p>UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION</p> <p>JOHN DOES A, B, C, D, E, F, G, H, MARY DOE and MARY ROE, on behalf of themselves and all others similarly situated, Plaintiffs, File No. 2:22-cv-10209 vs. Hon. Mark A. Goldsmith Mag. Curtis Ivy, Jr. GRETCHEN WHITMER, Governor of the State of Michigan, and COL. JOSEPH GASPER, Director of the Michigan State Police, in their official capacities, Defendants.</p> <hr/> <p>The remote videoconference deposition of STEVE BEATTY, taken before me, SANDRA APLEY, CSR-8838, a Certified Shorthand Reporter and Notary Public acting within the County of Oakland, State of Michigan, on Tuesday, June 6, 2023, at 9:00 a.m.</p>	<p>1 APPEARANCES: 2 3 AMERICAN CIVIL LIBERTIES UNION FUND OF MICHIGAN By: Ms. Miriam J. Aukerman (P63165) Ms. Dayja S. Tillman (P86526) 4 1514 Wealthy Street SE, Suite 260 Grand Rapids, Michigan 49506 5 (616) 301-0930 maukerman@aclumich.org 6 tillman@aclumich.org Appearing via videoconference on behalf of Plaintiffs 7 8 MICHIGAN DEPARTMENT OF ATTORNEY GENERAL By: Mr. Scott L. Damich (P70926) Mr. Eric M. Jamison (P75723) 9 525 West Ottawa Street Lansing, Michigan 48933 10 (517) 335-7573 damichs@michigan.gov jamisone@michigan.gov 11 12 MICHIGAN STATE POLICE By: Ms. Aimee L. Brimacombe (P70926) Specialist First Lieutenant 13 P.O. Box 30634 Lansing, Michigan 48909 14 (517) 290-8559 brimacombe@michigan.gov 15 16 17 18 19 Also present: Mariam Elbakr, Legal Intern, American Civil Liberties Union of Michigan 20 Jesse Lin, Legal Intern, Department of Attorney General 21 22 23 24 25</p>																																																																																																																																																												
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<p>1 A. How far back do you want me to go?</p> <p>2 Q. Well, looking at LinkedIn, it looks like you've got a</p> <p>3 BA in Wittenberg in 1991, and a JD from Cooley in</p> <p>4 1995. Is that accurate?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And then in terms of your work history, it</p> <p>7 looks like you were in private law practice for about</p> <p>8 nine years after you graduated from law school?</p> <p>9 A. Yes.</p> <p>10 Q. And then you worked as a prosecuting attorney in</p> <p>11 Lapeer County for about nine years.</p> <p>12 Does that sound right?</p> <p>13 A. Yes.</p> <p>14 Q. What kind of cases did you prosecute?</p> <p>15 A. All kinds of cases, I mean, felony trials. As a</p> <p>16 prosecutor, I had to defend a murder case in front of</p> <p>17 a jury. I've prosecuted and defended CSC cases. I've</p> <p>18 gotten acquittals in first degree CSC cases as a</p> <p>19 defense attorney. Gotten convictions in first degree</p> <p>20 CSC cases as defense attorney, all matters of trial</p> <p>21 work in defense and the prosecutor's office.</p> <p>22 Q. It sounds like a great and varied background.</p> <p>23 Then it looks like you moved to the Michigan</p> <p>24 State Police in October of 2013; is that right?</p> <p>25 A. Correct.</p>	<p>1 Q. And you have been at -- so you've been at the MSP for</p> <p>2 about ten years, not quite, right?</p> <p>3 A. Correct.</p> <p>4 Q. And you started as an MSP departmental specialist.</p> <p>5 What did that role entail?</p> <p>6 A. That was an attorney position within the department.</p> <p>7 Q. And what were your responsibilities?</p> <p>8 A. Similar to what I'm doing -- I do now. It's legal</p> <p>9 education, legal training, assist with the department</p> <p>10 with internal legal guidance, anything and everything.</p> <p>11 Other than the litigation which is in Special First</p> <p>12 Lieutenant Brimacombe's end of things, really anything</p> <p>13 that's legal related in the department or any member</p> <p>14 of the department can theoretically across my desk.</p> <p>15 Q. When you say that litigation is within First</p> <p>16 Lieutenant Brimacombe, what do you mean by</p> <p>17 "litigation"?</p> <p>18 A. When the department gets sued, right, we have a risk</p> <p>19 management section that is responsible for</p> <p>20 coordinating the response to any litigation against</p> <p>21 members if we're involved with representing the</p> <p>22 department as a whole, and she liaisons with the</p> <p>23 attorney general's office.</p> <p>24 Q. It looked like your job at MSP, department specialist</p> <p>25 was in the legislative and legal resources section</p>
<p>Page 9</p> <p>1 office of the director. Is that the name of the</p> <p>2 section that it was located in?</p> <p>3 A. It was.</p> <p>4 Q. Is it named something else now?</p> <p>5 A. It's been named a couple of different things. And</p> <p>6 we've moved bureaus a couple of times, if you know</p> <p>7 anything about state government, and things have been</p> <p>8 renamed a couple of times. But the responsibilities</p> <p>9 have generally remained the same.</p> <p>10 Q. Okay.</p> <p>11 A. Currently, we're tasked under the office of the</p> <p>12 director, and we've kind of come full circle. And</p> <p>13 it's legislative and legal resources now. The</p> <p>14 legislative side has split off.</p> <p>15 Q. So let me actually show you -- let me share my screen</p> <p>16 here.</p> <p>17 Can you see that document? This is</p> <p>18 Exhibit 1.</p> <p>19 A. I can.</p> <p>20 MS. AUKERMAN: Okay. This is an</p> <p>21 organizational chart for the Michigan State Police.</p> <p>22 Let's mark this as Exhibit 1.</p> <p>23 (Plaintiffs' Exhibit No. 1 was marked.)</p> <p>24 BY MS. AUKERMAN:</p> <p>25 Q. Can you show me where the legal -- you said you're now</p>	<p>Page 10</p> <p>1 under the office of the director. Can you show me on</p> <p>2 this or tell me on this where your unit is located?</p> <p>3 A. We've since -- this is not a current and just recently</p> <p>4 have reorganized again. But on this as of</p> <p>5 January 3rd, 2023, if you can see in the center</p> <p>6 column, the Transparency and Accountability Division.</p> <p>7 Q. The center column?</p> <p>8 A. Yeah. So go under the Professional Development</p> <p>9 Bureau, right, then down the right side, middle one,</p> <p>10 Transparency and Accountability Division headed by</p> <p>11 Captain Tom Deasy.</p> <p>12 Q. Yeah.</p> <p>13 A. Captain Tom Deasy is my immediate supervisor. So if</p> <p>14 you were to scroll further in the organization chart,</p> <p>15 those other charts would then break down each of those</p> <p>16 other boxes. And so for at the time, the Transparency</p> <p>17 and Accountability Division, you open that box, you</p> <p>18 would see my name in one those, the legal section of</p> <p>19 that box along with other sections in there, units and</p> <p>20 section.</p> <p>21 Q. So currently, what is the -- what is your unit</p> <p>22 currently called?</p> <p>23 A. It's legal resources and education.</p> <p>24 Q. Resources and education. And where is that currently</p> <p>25 located?</p>
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<p>1 A. It's still within the Transparency and Accountability 2 Division under Captain Deasy. 3 Q. And is Transparency and Accountability someplace else 4 than it shows on this work chart? 5 A. Now it's under the office of the director which isn't 6 depicted on this chart because that was a new -- as I 7 said, there was a reorganization. 8 MS. AUKERMAN: I'll just state for the 9 record, Scott, if we can get a copy of the org chart 10 'cause this is the most recent one I found online and 11 I want to make sure we have an updated and accurate 12 org chart. 13 MR. DAMICH: Sure. We'll follow up in an 14 email after or in writing after this. 15 MS. AUKERMAN: Will do. Okay. 16 BY MS. AUKERMAN: 17 Q. So let's go back to talking about your job 18 responsibilities. When you were the MSP department 19 specialist, did you have responsibilities related to 20 the Sex Offender Registration Act, or what we'll call 21 SORA? 22 A. I did. 23 Q. What were those? 24 A. It could be any numbers of things. It could be 25 questions being asked by the SOR Unit. It could be</p>	<p>1 review of department forms as part of the form review 2 process which could include whatever registry forms 3 were involved at the time. I'm not sure. 4 I mean, obviously, we all know about the 5 2011 amendments. I think there might have been a 6 couple of other minor tweaks. After that, I'm sure I 7 looked at those issues if they came up but -- 8 Q. And then -- go ahead. 9 A. No, that's it. 10 Q. And then it looks like in January 2018 you moved to be 11 an MSP departmental manager in-house legal advisor. 12 How did that job differ from your prior 13 position as a departmental specialist? 14 A. I assumed management of the unit, so whereas before, I 15 was an attorney within the unit. At that point, I 16 assumed manager of the unit. The manager who was 17 there before me moved to another position. 18 Q. Okay. And then in April 2021, you moved to be an 19 administrative law specialist? 20 A. Correct. 21 Q. And how did that position differ from your prior 22 position? 23 A. It was essentially a reclassification of the attorney 24 position within that section. But the 25 responsibilities essentially remained the same.</p>
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<p>1 Q. Fair enough. Are there other lawyers involved in 2 litigation?</p> <p>3 A. We don't litigate cases within the department. So 4 Specialist First Lieutenant Brimacombe does not 5 litigate cases on behalf of the department nor do any 6 of the other attorneys in the department. She 7 coordinates litigation with either the attorney 8 general's office or other counsel. She's the only 9 attorney in her section, the risk management section.</p> <p>10 Right now I'm the only attorney in legal 11 resources and education. I report to Captain Tom 12 Deasy as does Specialist First Lieutenant Brimacombe. 13 Captain Deasy is also a licensed attorney.</p> <p>14 Q. Are there other lawyers within MSP involved in legally 15 advising the department?</p> <p>16 MR. DAMICH: Objection. Asked and answered.</p> <p>17 BY MS. AUKERMAN:</p> <p>18 Q. You may answer.</p> <p>19 A. Again, there are other attorneys within the 20 department. I cannot speak for the occasions. I'm 21 sure there's occasions where people reach out to them 22 in their respective roles. But, again, I can't speak 23 for other attorneys on what they do.</p> <p>24 Specialist First Lieutenant Brimacombe is 25 responsible for risk management. I'm responsible for</p>	<p>1 the things that come through the legal resources and 2 education. You know, my boss is an attorney. I'm 3 sure he's providing guidance at times.</p> <p>4 Q. I'm just trying to get a sense of the staffing. You 5 obviously have a lot on your plate, and I'm just 6 trying to get a sense of how many folks are there.</p> <p>7 So it sounds like basically as a practical 8 matter when you're dealing with litigation or advising 9 the department on legal matters, it's Captain Deasy, 10 you, and First Lieutenant Brimacombe?</p> <p>11 MR. DAMICH: Objection to form.</p> <p>12 THE WITNESS: Yeah. I guess I'm not 13 understand- -- I mean, we all have our own 14 responsibilities. It's a big department, and it would 15 be presumptuous of me to say what anyone else is doing 16 on a day-to-day basis. I can tell you that I'm very 17 busy, and I believe they're busy as well.</p> <p>18 BY MS. AUKERMAN:</p> <p>19 Q. Let's talk a little bit more about your specific 20 responsibilities related to the registry.</p> <p>21 Can you give me a list of what it is that 22 you do related to the sex offender registry?</p> <p>23 A. A list, no. I mean, the registry is the registry. So 24 as questions come up, I go -- I go to the Sex Offender 25 Registration Act. I review, and I apply. I give</p>
<p>Page 17</p> <p>1 guidance as -- I read the statute and go from there.</p> <p>2 Q. And to whom do you give guidance to?</p> <p>3 A. The Sex Offender Registry Unit if they have questions 4 that come up, the department, you know, as a body, 5 guidance.</p> <p>6 Q. The public?</p> <p>7 A. I don't give guidance to the public.</p> <p>8 Q. To registrants?</p> <p>9 A. Again, are you asking me personally?</p> <p>10 Q. Yeah. Do you give guidance to registrants, is the 11 question.</p> <p>12 A. Registrants, no. I mean, there's information that's 13 publicly made available to the public that can be 14 described as, I suppose, providing information. You 15 go to your SOR Unit's website which I'm sure you've 16 viewed a number of times. There's documents on there 17 that are informative that some might characterize as 18 guidance. But, no, I don't respond to individual 19 offenders and answer questions, and I encourage -- you 20 know, our SOR Unit and staff, we don't give legal 21 guidance. That's not our responsibility.</p> <p>22 Q. Do you give guidance to prosecutors?</p> <p>23 A. Again, I don't. The Michigan State Police is not in a 24 supervisory capacity over local prosecutors that are 25 police agencies. I strongly stress that we don't give</p>	<p>Page 18</p> <p>1 guidance to anyone outside of the department other 2 than publicly available information you see that's 3 general in nature which if it's out there, it's found 4 on the SOR website which I'm sure you're familiar 5 with.</p> <p>6 Q. Do you get questions from local law enforcement about 7 SORA?</p> <p>8 A. Do I --</p> <p>9 MR. DAMICH: Objection. Asked and answered.</p> <p>10 THE WITNESS: Again, I can't tell you that 11 I've never gotten a phone call or a reach out of, hey. 12 I can tell you my general answer is talk to your 13 attorney.</p> <p>14 BY MS. AUKERMAN:</p> <p>15 Q. You mentioned that you are involved in the process of 16 drafting forms, I believe, is that correct, or 17 reviewing forms?</p> <p>18 A. I would say reviewing is probably a more accurate 19 characterization.</p> <p>20 Q. Who drafts the forms?</p> <p>21 A. There's a form review process. So for any form within 22 the department, there's an assigned form coordinator, 23 and then there's a process of review of any department 24 form that it goes through. Legal review at some point 25 is one part of that process.</p>

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<p>1 Q. Do you draft -- are you involved in the development of 2 policies related to SORA? 3 A. Could you be more specific? 4 Q. So like standard operating procedures. 5 A. As far as the department's written directives, again, 6 there's a process for the department's written 7 directives. As part of that process, one part of that 8 is a legal review board component. So, yes, to that 9 component, yes. 10 Q. And you mentioned that you respond to questions from 11 the SOR Unit, correct? 12 A. Correct. 13 Q. Do you also respond to questions from the SOR 14 Enforcement Unit? 15 A. Occasionally. 16 Q. Do you -- are you involved in decisions regarding the 17 public website? 18 A. "Decisions," can you be more specific? 19 Q. If there are decisions that need to be made about 20 what's posted on the website, that kind of thing. 21 A. I answer questions as they come up based on the facts 22 as they're presented to me. I look to the statute, 23 and, you know, the statute is pretty clear on what is 24 required to be public and what's not required to be 25 public. And that's where I go to answer the question.</p>	<p>1 Q. Are you involved in -- do you have a role in 2 legislative work related to SORA? 3 A. I'm not a department lobbyist. I'm not a department 4 liaison with the legislature. But, again, to the 5 extent that those folks in their areas of work reach 6 out to me for legal questions, I answer to the best of 7 my ability, but I'm not -- I'm not a legislative 8 liaison. 9 Q. Do legislative liaisons reach out to you about 10 SORA-related questions? 11 A. They have. 12 Q. With respect to litigation, you mentioned that that's 13 handled largely by First Lieutenant 14 Brimacom (phonetic) -- 15 A. I'm gonna correct, "Brimacombe." 16 Q. "Brimacombe," I apologize. I apologize. I can't see 17 the name spelled on my -- I guess there it is at the 18 bottom. Okay. I apologize. 19 Are you -- do you play a role in responding 20 to discovery requests? 21 A. As a member of the department, when a discovery 22 request comes in through the risk management section 23 and it goes out to whoever it seeking the information 24 that the requester is seeking, sometimes that 25 information is seeking information within my</p>
<p>Page 21</p> <p>1 knowledge. And, yes, so I respond to whatever 2 question to respond to as any other member of the 3 department. 4 Q. Did you play a role in responding to discovery 5 requests in this case? 6 A. Yes. I'm sure I did. I assume whatever was sent to 7 me to look at of, hey, what do you know of this 8 response to this request? I respond to those requests 9 as they come in. 10 Q. Who else was involved in the process of responding to 11 discovery in this case? 12 A. You would have to talk to the risk management section. 13 I don't process the discovery requests as they come 14 in. I'm a member who might be asked if I have 15 responsive documents, but I don't -- you know, I'm an 16 attorney. I don't respond to discovery requests 17 directly. 18 Q. So you would not have reviewed the discovery 19 request -- the responses to the discovery request that 20 were produced in this case, correct? 21 A. Correct. 22 Q. Are you familiar with the documents that were produced 23 in this case? 24 A. Probably some of them, yes, but I -- they'd come 25 across my desk immediately before it hit your desk;</p>	<p>Page 22</p> <p>1 I'll tell you that. 2 Q. Okay. Were you consulted with respect to the state's 3 preparation of its Answer in this case? 4 A. Yeah, I don't recall. 5 Q. Okay. Are you consulted with respect to the 6 litigation positions that the state takes in this 7 case? 8 A. Again, can you be more specific? 9 Q. Yeah, sure. So to take an example, we filed a motion 10 to amend the Complaint and add a claim. The state 11 decided to oppose that motion rather than stipulating 12 to it. 13 Is that a decision that you were consulted 14 about? 15 A. I don't recall that specific one. If I'm asked for my 16 opinion on something that's SOR related in response to 17 litigation, I provide it. 18 Q. Is someone at the MSP consulted about those decisions, 19 if you know? 20 A. I'm sure, yes. I mean, ultimately, if it's a question 21 being asked of the client, and the Michigan State 22 Police is the client, then those requests would go 23 through the risk management section. And whoever -- 24 if it's the department representative, you know, 25 speaks for the department on those decisions.</p>

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<p>1 Q. So who in the risk management section is making those 2 decisions?</p> <p>3 A. Again, Specialist First Lieutenant Brimacombe is the 4 department's risk manager.</p> <p>5 Q. Does she make those discussions, or are they made 6 higher up?</p> <p>7 A. That might be a better question for her.</p> <p>8 Q. Okay. Let's go back to Exhibit 1. This is, again, 9 the organizational chart.</p> <p>10 Can you tell me where on this organizational 11 chart policy decisions related to SORA are made?</p> <p>12 A. No.</p> <p>13 Q. Why not?</p> <p>14 A. Well, we don't have a box on there that says policy, 15 so -- and I guess it depends on what type of policy. 16 I guess I'm not understanding.</p> <p>17 Q. So there are a variety of -- there are a variety of 18 decisions that have to be made regarding SORA, and I'm 19 trying to understand where in the organizational 20 structure those decisions are made.</p> <p>21 A. If you could be more specific as to the specific 22 decision that's made, then I might be able to point in 23 the direction. But to describe it as a variety of 24 policy decisions, that can involve any number of 25 different worksites.</p>	<p>1 Q. Well, let's ask this a different way. 2 What decision can the SOR Unit make without 3 going up the chain of command?</p> <p>4 A. The Michigan State Police is responsible under the act 5 to maintain a registry. Period. The SOR Unit is not 6 a local registering authority. They don't take 7 registrations, and they make no determinations as to 8 who is legally required to be, you know, on the 9 registry.</p> <p>10 Ultimately, the statute says an individual 11 who meets certain conditions is required to register. 12 Whether they do or not is them. The only 13 determination, if you look in SORA, I believe if you 14 look and type the word "determination," there's lots 15 of instances where it says "the court shall 16 determine." I think the only use of the word 17 determination -- and I don't have it in front of me -- 18 is for -- and it's relatively new.</p> <p>19 I think it's new to the new SORA that says 20 if the department makes a determination -- and, again, 21 I'm phrasing -- that someone -- I'm butchering it, but 22 I forget the one section. But it's the -- I have to 23 look at the SORA, but there's only one use of the word 24 determination that's applicable to the department, I 25 guess, is what I'm comfortable saying.</p>
<p>Page 25</p> <p>1 Q. So the SOR Unit has to determine if the person has 2 been convicted of an offense that is a registrable 3 under the statute, correct?</p> <p>4 A. No. I don't believe that to be true. For someone, if 5 you're talking about an in-state conviction, that 6 determination is made prior to sentencing or it's not 7 made, which means the determination is made, the 8 probation officer is responsible for registration. 9 There's an opportunity for a hearing prior to 10 sentencing. The court cannot under SORA go forward 11 with sentencing until it makes the determination on 12 registration. So for any in-state conviction, as I 13 understand it, that determination should have been 14 made by the court at the time of sentencing whether 15 someone is to register or not register.</p> <p>16 Q. So let's talk about litigation decision-making. The 17 state is usually represented by the attorney general's 18 office, correct?</p> <p>19 A. Usually, I would -- it would be a guess. I would 20 assume so, but that's not my area.</p> <p>21 Q. Who's involved on the client's side of making 22 litigation decisions around SORA?</p> <p>23 A. Again, that would be a question for the risk 24 management section.</p> <p>25 Q. So let's take an example. The state sought SOR in</p>	<p>Page 26</p> <p>1 Does 1. Who was involved in that decision?</p> <p>2 A. Are you asking if our attorneys reached out to the 3 client and had a discussion as to whether or not to 4 seek SOR. Who was involved in deciding whether or not 5 to seek it, I guess is...</p> <p>6 Q. Yeah. Who was on the --</p> <p>7 A. I don't have personal knowledge is the answer to the 8 question. I don't know the answer to that.</p> <p>9 Q. Okay. After the Does 1 decision, Michigan decided to 10 continue applying SORA to pre-2011 registrants. 11 Who made that decision?</p> <p>12 A. You use the word "Michigan." I'm only concerned with 13 the Michigan State Police.</p> <p>14 Q. Okay. Who at the Michigan State Police decided to 15 continue publicly registering and maintaining the 16 registry, pre-2011 registry?</p> <p>17 MR. DAMICH: Objection. Form.</p> <p>18 THE WITNESS: Yeah. I mean, there's so many 19 Does. I'm trying to think back, right. Was Does 1 -- 20 is that the one that was the district court opinion 21 that went in one decision before it went to the Sixth 22 Circuit the first time?</p> <p>23 Is that what you're talking about?</p> <p>24 BY MS. AUKERMAN:</p> <p>25 Q. In Does 1, the Sixth Circuit held that Michigan's</p>

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<p>1 registry had an unconstitutional ex post facto -- was 2 an unconstitutional ex post facto law that applied to 3 pre-2011 registrants.</p> <p>4 A. And I think in response to that Sixth Circuit 5 opinion -- which I'm sure was provided in discovery -- 6 through guidance, I believe, with the attorney 7 general's office, correspondence went out that 8 directed what our members should or shouldn't do in 9 response to that decision. What other departments did 10 in response to that or didn't do, I can't speak to, 11 but I'm sure it was provided in discovery the 12 correspondence to our members as a result of that 13 Sixth Circuit opinion.</p> <p>14 Q. Okay. Were you involved in that correspondence?</p> <p>15 A. I believe I was, yes.</p> <p>16 Q. And the Michigan State Police maintained and continued 17 to publically register individuals with pre-2011 18 convictions after the Does 1 decision, correct?</p> <p>19 MR. DAMICH: Objection to form. Foundation.</p> <p>20 THE WITNESS: Well, again, the Michigan 21 State Police is responsible for maintaining a registry 22 and what --</p> <p>23 BY MS. AUKERMAN:</p> <p>24 Q. You're not answering my question, Mr. Beatty. My 25 question is did the Michigan State Police continue to</p>	<p>1 register people and publish the registrants, the 2 pre-2011 registrants after the Does 1 decision?</p> <p>3 MR. DAMICH: Objection to foundation.</p> <p>4 THE WITNESS: Again, I -- if there's a 5 specific offender you're asking about, then I will. 6 Whatever guidance we gave, it was as a result of 7 information and guidance provided by the attorney 8 general's office. Whatever correspondence went out 9 was vetted by our attorneys, and whatever that 10 correspondence said, then that's what our members were 11 directed to do.</p> <p>12 BY MS. AUKERMAN:</p> <p>13 Q. So the SOR Unit didn't remove pre-2011 registrants 14 after Does 1, correct?</p> <p>15 MR. DAMICH: Objection to form and 16 foundation. Asked and answered.</p> <p>17 THE WITNESS: Yeah, I don't -- as far as the 18 day-to-day workings of the SOR Unit, that's the SOR 19 Unit's responsibility. I've got my own stuff to worry 20 about.</p> <p>21 BY MS. AUKERMAN:</p> <p>22 Q. Who made the decision not to remove pre-2011 23 registrants after the Does 1 decision?</p> <p>24 MR. DAMICH: Objection. Form. Foundation.</p> <p>25 THE WITNESS: Again, I don't -- whatever</p>
<p>Page 29</p> <p>1 corres- -- the guidance we gave was in correspondence. 2 That is the written directive of the department. 3 Members were expected to follow whatever that guidance 4 was. If you had that guidance in front of me, maybe 5 it would refresh my memory as to what that guidance 6 was five years ago, or whatever the time period, 7 whatever that was. That's what members were expected 8 to do at that point in time until they got a different 9 guidance.</p> <p>10 BY MS. AUKERMAN:</p> <p>11 Q. Let's have another example. I'm just trying to 12 understand how these policy decisions are made. 13 So in Does 2, the Michigan State Police and 14 the government stipulated in May 2019 to a declaratory 15 class-wide judgment that SORA violates the ex post 16 facto clause for pre-2011 registrants. 17 Do you know how the decision to stipulate to 18 that declaratory judgment was made?</p> <p>19 MR. DAMICH: Objection. Form and 20 foundation.</p> <p>21 THE WITNESS: Yeah, I don't recall that 22 specific discussion stipulation.</p> <p>23 BY MS. AUKERMAN:</p> <p>24 Q. Do you know who would be involved in such decisions?</p> <p>25 A. I don't recall that decision. I'm not saying it</p>	<p>Page 30</p> <p>1 wasn't made. I just don't recall it.</p> <p>2 Q. Give you another example. In discovery, we received a 3 list of individuals who were apparently removed from 4 the registry after Does 1 because they felt it was 5 under the recapture provision of SORA. 6 Are you familiar with the recapture 7 provision of SORA?</p> <p>8 A. Yes.</p> <p>9 Q. Were recaptured cases removed after Does 1?</p> <p>10 A. Again, I don't touch the registry to remove or not 11 remove individuals. Whatever we did in response to 12 SOR went out in correspondence to our members, and 13 they were expected to do whatever they were told to do 14 in that correspondence. 15 Whether that happened on a specific 16 occasion, you'd have to look at the individual 17 offender and see what happened and when. But whatever 18 we did in response to SORA or were directed to do or 19 guided to do in response to SORA, went through our 20 legal counsel and was shared to members. 21 Q. When you say "went through our legal counsel," what do 22 you mean by that?</p> <p>23 A. Well, if it's related to active litigation it would 24 have been representatives of the attorney general's 25 office.</p>

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<p>1 Q. So if I told you that the SOR Unit itself was the one 2 that removed these recapture cases, who would have 3 made the decision to remove them? 4 A. I don't recall that decision made -- it was being 5 made. If they were directed to do it, you know -- I 6 don't recall that specific decision. I may have had 7 involvement in that. I may not have had. I don't 8 recall. But if whatever guidance I gave would have 9 been, you know, based on guidance that came through 10 representatives of the attorney general's office. 11 Q. So you don't know whether recapture cases were removed 12 after Does 1? 13 A. I recall recapture being an issue at some point back 14 then and there. 15 Q. But you don't know whether they were removed or not? 16 A. I don't touch -- 17 MR. DAMICH: Objection. Asked and answered. 18 THE WITNESS: -- the registry on a 19 day-to-day basis. So if you want to ask about a 20 specific offender, one of your specific clients, then 21 maybe we can be responsive. But broad 22 generalizations, it comes across as always or never, 23 and I'm not comfortable answering an always or never 24 question over things I didn't have personal control 25 over.</p>	<p>1 BY MS. AUKERMAN: 2 Q. Okay. So let's move on. After Does 1 was decided in 3 the Sixth Circuit, what steps did the Michigan State 4 Police take in light of that decision? 5 You mentioned that there was some guidance 6 that went out. Was there anything else that the 7 Michigan State Police did? 8 MR. DAMICH: Objection to form. 9 THE WITNESS: Again, whatever guidance -- 10 again, that's a long time ago, and a lot of litigation 11 ago. So whatever guidance went out, when we wanted 12 our members to do something in response to a decision 13 that was made in any of these various numbered Does 14 cases, correspondence went out to our members, and 15 they would have been expected to follow whatever that 16 guidance was. 17 BY MS. AUKERMAN: 18 Q. Do you know if the Michigan State Police started 19 categorizing registrants in terms of pre-2000 and 20 post-2011 registrants after the Does 1 decision? 21 A. I believe that was done and largely because you were 22 insisting it to be done as part of your litigation. 23 Q. With respect to this litigation, do you know who's 24 being consulted at the governor's office regarding 25 litigation decisions?</p>
<p>Page 33</p> <p>1 MR. DAMICH: Object to form. Foundation. 2 THE WITNESS: No. 3 BY MS. AUKERMAN: 4 Q. Are you familiar with the legislative work group that 5 met after the Does 2 litigation was put on hold to 6 allow for passage of new legislation? 7 MR. DAMICH: Objection to form. 8 BY MS. AUKERMAN: 9 Q. Are you familiar with -- you're familiar with the Does 10 2 litigation, correct? 11 A. Correct. The numbers are overlapping for me because 12 as far as I know, this is about the current SOR. The 13 current litigation, Does 3, is about the current SOR. 14 The previous Does resolved the issues with the prior 15 SOR, so, you know, talking in terms of litigation 16 related to the new SOR but going back to litigation 17 stuff from prior decisions. But, yes, I do recall. 18 Even before that, I recall a work group that 19 you and I were at meetings together even before the 20 directions from the core talking about SOR issues. At 21 what point in time, what group, I believe you were a 22 part of all those work groups, too, as well as the 23 ACLU. So if there's specific meetings, you guys would 24 have knowledge of that work group as well. 25 Q. Do you -- were you involved in decision-making about</p>	<p>Page 34</p> <p>1 what the Michigan State Police's position should be on 2 legislative -- possible legislative changes? 3 A. If I was asked a question, I may have given my 4 opinion, but whatever decision was conveyed, 5 quote/unquote, "downtown," that's not me. 6 MR. DAMICH: Objection to form. Foundation. 7 BY MS. AUKERMAN: 8 Q. So who is responsible for making those decisions? 9 A. Legislative policy decisions? 10 Q. Yes. 11 A. Again, as far as what is made, it would be conveyed 12 through the government, now government relations 13 section. They are the department's legislative 14 liaisons. 15 Q. Let me give you an example. So in the work group 16 there was a discussion about what the length of 17 registration terms should be. 18 Who is involved in the developing the 19 Michigan State Police's position of what the length of 20 registration terms should be? 21 MR. DAMICH: Objection. Form. Speculative. 22 THE WITNESS: I'm trying to think of timing 23 wise because there was times where I was involved with 24 giving an opinion on things and times when I wasn't 25 involved. If I recall correctly, there was -- I</p>

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1 recall there being a time where there was -- I don't
2 know if it was Does fatigue, but there was some
3 discussion that there were shorter duration times
4 being discussed on both sides.

5 In fact, I recall there was actually --
6 again, not knowing what the legislature would do --
7 stakeholders on various sides who, you know, were
8 talking about shorter proposed registration periods or
9 an opportunity of going nonpublic within a certain
10 period of time. I think it was, you know, Tier I, II,
11 and III.

12 The proposal was going back and forth, and
13 there was multiple proposals. You sent proposals.
14 Proposals from other stakeholders coming in. All
15 those going back and forth, and there's one with -- it
16 could have been non-registration for -- or nonpublic
17 that after 5, 10 or 15 years for all but the sex
18 offenders with victims under 13, a path off for all
19 offenders, and, you know, 10, 15 or 20 years unless
20 they perp'd on a child under 13.

21 And I seem to recall that you guys could
22 have had that go through, but you advocated against it
23 because it didn't have risk assessments. And at some
24 point after that, and I don't know where it happened,
25 I think the policy decision in the legislature

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1 she had. First Lieutenant Fitzgerald, when he was in
2 charge -- I mean, I know you had those meetings and
3 emails back and forth. He's since retired, but he was
4 in government relations at the time. And at the time
5 was my direct supervisor for a period of time.

6 So it depends on when you want to know when
7 things were conveyed downtown on behalf of the state
8 police from a legislative standpoint, and you have to
9 look at who was in charge of that section at that
10 time.

11 Q. So I'm looking at 2019 and 2020 when the legislative
12 work group, that Does 2 legislative work group was
13 active.

14 Who was responsible for decision-making at
15 the MSP about legislation at that time?

16 A. Well, I think during that time I'm pretty sure First
17 Lieutenant Fitzgerald was there, but I don't recall
18 when he retired. And then I believe it would have
19 been First Lieutenant Williams after that. But,
20 again, timing wise, I don't know when those changes
21 came in relation to what discussions.

22 Q. Do you know why the legislative work group stopped
23 meeting?

24 A. I do not.

25 MR. DAMICH: Objection to form. Foundation.

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1 changed, and they just decided to go SORNA compliant.

2 Who made that decision downtown?

3 Ultimately, it's a legislative decision. But, you
4 know, it did always bother me personally that you were
5 advocating against, you know, the interest of your
6 clients in many ways. Many of whom if that had gone
7 through when you hadn't objected and insisted on risk
8 assessments might be off the registry now.

9 BY MS. AUKERMAN:

10 Q. Well, I'll state for the record that was not our
11 position, but you obviously recall it the way you
12 recall it.

13 With respect to the Michigan State Police's
14 position on what -- you described various proposals
15 about the length of registration, whether or not
16 registration should be public or so forth. Who at the
17 Michigan State Police decided what the Michigan State
18 Police's position should be on those proposals?

19 A. I think it depends on the timing of it and who was in
20 charge of the government relations unit at the time.
21 I mean, I think -- was it Shelli Weisberg? Is she
22 your legislative policy person, or was she at the
23 time?
24 Q. She was at the time.
25 A. Okay. Yeah, I don't know if she still is, but I know

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1 BY MS. AUKERMAN:

2 Q. Do you know what the position of the governor's office
3 was with respect to drafts that were under discussion
4 in the legislative work group?

5 MR. DAMICH: Objection. Foundation.
6 THE WITNESS: No.

7 BY MS. AUKERMAN:

8 Q. Do you know who wrote the draft of 2020 House Bill
9 5679 that was initially introduced?

10 A. No.

11 Q. Do you know if the Michigan State Police was involved
12 in drafting that?

13 A. I know that my section during that time was asked,
14 even internally, of the issues of, you know, if we had
15 a magic wand and wanted to, you know, rewrite or deal
16 with some of these issues. There were various drafts
17 going back and forth internally. Whether those were
18 shared or made its way anywhere else, I don't think
19 they were, but, again, we have lots of internal
20 discussions regarding SOR.

21 Q. Do you recall if the Michigan State Police was asked
22 to provide any database to legislative drafters?

23 A. I don't recall. As far as what kind of data, from the
24 registry?

25 Q. Yeah, data from the registry.

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<p>1 A. I mean, publically available information may have been 2 shared, you know, from the public's side of things, 3 but there would not have been occasion or a reason to 4 share nonpublic data from the registry. 5 Q. Do you recall if the attorney general's office was 6 involved in the drafting of the initial version of 7 2020 House Bill 5679? 8 MR. DAMICH: Objection. Foundation. 9 BY MS. AUKERMAN: 10 Q. If you know. 11 A. I don't recall which -- what 5679 -- is 5679 what 12 ultimately became the 2021? 13 Q. There was an initial version that was then revised 14 that became 2021? 15 A. Yeah, I don't -- yeah, I don't know what the attorney 16 general's involvement was. I mean, that work group, I 17 do recall at some point seeing an email with that work 18 group in which you and others from the ACLU were on 19 it, as well as representatives from the AG's office, 20 as well as representatives from the governor's office. 21 Whatever the -- sorry. I had a Microsoft thing pop up 22 on my screen and just take over my screen, so I 23 apologize, so that workgroup. 24 And then I think there was some legislative 25 aides that were on it as well that was coordinating</p>	<p>1 these meetings. I don't think I was a part of that 2 work group at that time, but I think you were and 3 others. So who drafted what words? I don't know. 4 But I think there was a lot of hands in the kitchen at 5 that point in time. 6 Q. Do you recall that when House Bill -- 2020 House Bill 7 5679 was introduced the Michigan State Police 8 submitted comments on the bill? 9 MR. DAMICH: Objection. Foundation. 10 THE WITNESS: I don't recall. I'm not 11 involved with submitting comments or objections or 12 concerns or support for specific bills. 13 BY MS. AUKERMAN: 14 Q. Okay. Let's talk about implementation of SORA 2021. 15 SORA was amended effective March 24th, 2021; 16 is that correct? 17 A. Yes. 18 Q. And you're familiar with the new statute? 19 A. Yes. 20 Q. You work with that statute on more or less a daily 21 basis? 22 A. Frequently. 23 Q. Okay. After SORA 2021 was passed, what steps did the 24 Michigan State Police take in response to the passage 25 of new legislation?</p>
<p>Page 41</p> <p>1 MR. DAMICH: Objection. Ambiguous. 2 THE WITNESS: The Michigan State Police, I 3 mean, going back to the constitution, we're the 4 executive branch. We don't pass legislation. So, you 5 know, it's -- we may have a position, but we don't 6 pass anything. 7 BY MS. AUKERMAN: 8 Q. Well, okay, but that's not my question. My question 9 is the law changed. Michigan State Police is 10 responsible for maintaining the registry. 11 What steps did the Michigan State Police 12 take, and why did the law change? 13 A. Okay. I think that's a different question than you 14 asked. You asked what steps do we take to change the 15 law, what do we do in response to the change in the 16 law. 17 We read it. We analyzed it. There were 18 certain requirements, I think, within the act itself, 19 notice requirements. We worked through our legal 20 counsel and developed communications if there were 21 necessary changes in forms. Again, working through 22 legal counsel and all of those decisions are reflected 23 in the publically available documents that were placed 24 on the SOR website. 25 Letters, I believe, were sent out by the</p>	<p>Page 42</p> <p>1 attorney general's office to PAAM. Letters were sent 2 to offenders. Those documents, I think, speak for 3 themselves and reflect what the Michigan State Police 4 did in response to the new legislation. 5 Q. When you say that you worked through legal counsel, do 6 you mean the attorney general's office? 7 A. Correct. 8 Q. And who at the attorney general's office? 9 A. At various times it -- I mean, Mr. Damich was a little 10 more recent. Mr. -- you're talking since 2021? 11 Q. Right. Since March of 2021. 12 A. I believe it was Mr. Jamison, Mr. Damich, 13 Mr. Restuccia. Mr. Park, I believe is from 14 corrections. I think he has been in some discussion 15 but... 16 Q. Were there changes to the SOR database that were made 17 in response to the March 2021 legislation? 18 A. What I know about databases, there's tweaks and 19 changes that happen constantly, so whatever guidance I 20 gave would be -- you know, wherever the statute 21 requires us to do with respect to database, that's 22 what we need to do with respect to the database. 23 Q. So is it your testimony that you would have instructed 24 the SOR Unit to modify the database to reflect the new 25 statute?</p>

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<p>1 MR. DAMICH: Objection. Ambiguous. Form.</p> <p>2 THE WITNESS: Is there a specific provision</p> <p>3 of the new statute that's different from the old</p> <p>4 statute that required a change that you'd like to ask</p> <p>5 about, and if there is, then I'm assuming we advised</p> <p>6 that the system has to do what the statute is asking</p> <p>7 it to do.</p> <p>8 BY MS. AUKERMAN:</p> <p>9 Q. Were there internal instructions that were created for</p> <p>10 the SOR Unit?</p> <p>11 A. What do you mean?</p> <p>12 Q. Internal instructions about, you know, under the new</p> <p>13 statute, we no longer register certain individuals</p> <p>14 with HYTA, Holmes Youthful Trainee Act, and so,</p> <p>15 therefore, you need to do X, Y, and Z with respect to</p> <p>16 reviewing people for Holmes Youthful Trainee Act, for</p> <p>17 example?</p> <p>18 A. Again, whatever the statute required us to do, that</p> <p>19 would have been conveyed to the SOR Unit. So if there</p> <p>20 was something that was a hard requirement under the</p> <p>21 act, then that was certainly conveyed.</p> <p>22 Q. Would that have been conveyed in writing?</p> <p>23 A. Yeah. It may have been. I don't know.</p> <p>24 Q. Okay.</p> <p>25 A. So the requirements of the new act -- like I said,</p>	<p>1 there was publically available documents that were out</p> <p>2 there that went to courts and offenders. I don't</p> <p>3 recall specifically. If you can direct me to the</p> <p>4 specific section of SOR that changed with respect to</p> <p>5 HYTA, whatever that said we were required to do, we</p> <p>6 were -- we did it.</p> <p>7 Q. When you said there were publically available docs</p> <p>8 that went to court, what documents went to court?</p> <p>9 A. I think it may have been court, but I really believe</p> <p>10 there was a letter that was sent by the attorney</p> <p>11 general's office to PAAM, the prosecutors. I believe</p> <p>12 there were correspondence, you know, in the general</p> <p>13 nature that went to registrants.</p> <p>14 Again, if you went onto the SOR website</p> <p>15 right now, I think they're all posted there. Whatever</p> <p>16 is on or has been posted as a public document on the</p> <p>17 SOR website, that's what I'm referring to when I say</p> <p>18 "publically available."</p> <p>19 Q. So you're referring to the documents that are on the</p> <p>20 SOR website. You're not aware of documents other than</p> <p>21 those that were on the website that were sent out?</p> <p>22 A. Sent out, correct, I'm not aware of -- yeah, I mean, I</p> <p>23 think even on that public website there's a form</p> <p>24 letter, right, so if -- you know, it may say dear</p> <p>25 blank registrant, you know. That's what I'm talking</p>
<p>Page 45</p> <p>1 about the public documents.</p> <p>2 There may have been the actual letter to the</p> <p>3 specific registrants that went out that I never saw.</p> <p>4 But if it's, you know, dear blank prosecutor, I'm</p> <p>5 assuming there were 83 of those that went out. Did I</p> <p>6 see all these individual 83 letters? No.</p> <p>7 Q. Okay. Are there letters that went out to law</p> <p>8 enforcement?</p> <p>9 MR. DAMICH: Objection. Asked and answered.</p> <p>10 THE WITNESS: Well, there would be required</p> <p>11 letters that came out as a result of Does 2, right, so</p> <p>12 I know that was in -- and there may be some overlap.</p> <p>13 I'm not sure if there was a letter -- again, you have</p> <p>14 to go to the website. Whatever was sent out, I</p> <p>15 believe, is publically available on that website.</p> <p>16 Q. Okay. Let's look at a section of the statute here.</p> <p>17 Let me share my screen. This is MCL 28.725. Let's</p> <p>18 mark this as Exhibit 2.</p> <p>19 (Plaintiffs' Exhibit No. 2 was marked.)</p> <p>20 BY MS. AUKERMAN:</p> <p>21 Q. Let me find the -- okay. So I highlighted here both</p> <p>22 Sections 1 and 2, and both of those provide for</p> <p>23 reporting in a manner prescribed by the department,</p> <p>24 correct?</p> <p>25 Do you see that?</p>	<p>Page 46</p> <p>1 A. I do.</p> <p>2 Q. Okay. And this provision relates to information that</p> <p>3 registrants need to report within three days after a</p> <p>4 change of that information, correct?</p> <p>5 A. Within that more than three business days.</p> <p>6 Q. Right, not more than three business days.</p> <p>7 So Section 1 concerns reporting of changes</p> <p>8 to resident's employment, higher education, name, or</p> <p>9 changes under Section 4a which also relates to higher</p> <p>10 education; is that correct?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And Section 1 provides an individual required</p> <p>13 to be registered under this act which a resident of</p> <p>14 this state shall report in person or in another manner</p> <p>15 as prescribed by the department, correct?</p> <p>16 A. Correct.</p> <p>17 Q. So the statute allows resident changes to be reported</p> <p>18 within three days or in another manner prescribed by</p> <p>19 the department, correct?</p> <p>20 A. Correct.</p> <p>21 Q. And what is the manner of which registrants must</p> <p>22 report residential changes?</p> <p>23 A. I would have to look at the forms. I haven't reviewed</p> <p>24 the forms in a while, but I believe the forms were</p> <p>25 revised after or upon the effective date of the new</p>
<p>Page 47</p>	<p>Page 48</p>

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<p>1 statute. And whatever those forms are, that is the 2 manner that has been prescribed by the department. 3 Q. Okay. So let's take a look at that, then. Give me a 4 second. 5 MS. AUKERMAN: Taking these a little bit out 6 of order. This is Exhibit 5. This is the Michigan 7 Sex Offender Registration/Verification/Update, RI-004. 8 (Plaintiffs' Exhibit No. 5 was marked.) 9 BY MS. AUKERMAN: 10 Q. Do you recognize this document? 11 A. Yes. It's been a while since I've looked at it, but 12 yes. 13 Q. Okay. So let's scroll down to what's called the 14 Explanation of Duties. That's towards the end of the 15 document. And if we look at paragraph 6, does it say 16 there that the individual is required to report in 17 person within three days -- not more than three 18 business days for an address change, correct? 19 A. That's what it says. 20 Q. Okay. So the statute that we looked at before also 21 allows employment changes to be reported in person 22 within three days or in another manner prescribed by 23 the department, correct? 24 A. I believe -- that's not in front of me anymore, but if 25 you're reading it, then that's...</p>	<p>1 Q. Do you want me to go back to it? 2 A. If you're representing that that's what it says, then 3 I have no reason to challenge that. 4 Q. Okay. And that applies also to residential and higher 5 education changes, correct, and name changes? 6 A. Same, unless I'm doing a side-by-side comparison, but 7 if you're representing that's what it says, then 8 that's what it says. 9 Q. Okay. Let's go just go back to Exhibit 2. 10 Do you see here that the statute allows for 11 registration -- for reporting updating of address 12 changes, employment, higher education, name changes, 13 and the Section 4a information which also relates to 14 higher education to be reported not more than three 15 business days. And that that is either filed in 16 person or in another manner as prescribed by the 17 department. 18 Do you see that there? 19 A. Yes. 20 Q. Okay. And going back to the Explanation of Duties in 21 paragraph 6, this is again Exhibit 5. 22 A. I see your emails, your Outlook. I don't see it on 23 the screen. 24 Q. I'm sorry. Let me stop that. Thank you. 25 Okay. All right. Do you see Exhibit 5 now?</p>
<p style="text-align: center;">Page 49</p> <p>1 A. Yes. 2 Q. Okay. So on No. 6 here, do you see that it 3 requires -- the way that it is explained to 4 registrants is that they're required by law to report 5 in person for address changes, employment changes, 6 school, name changes, correct? 7 A. That's what it says, yes. 8 Q. Okay. So the MSP could prescribe a different manner 9 of reporting under the statute, correct? 10 A. Reporting or updating or verifying, right. I mean, 11 we're talking about a few different things. I 12 think -- isn't there another form that allows for 13 certain verifications to be done outside of doing it 14 in person? 15 Q. Well, we'll get to that form, but that's not the form 16 that's relevant here. 17 A. Okay. 18 Q. So this is -- this Explanation of Duties says that 19 they have to report address information, employment 20 information, name changes, and education in person. 21 And the statute provides that it could be done in 22 person or in a manner prescribed by the department. 23 Who made the decision at the MSP that it 24 would need to be done in person? 25 MR. DAMICH: Objection to form. Foundation.</p>	<p style="text-align: center;">Page 50</p> <p>1 THE WITNESS: That form, "to require in 2 person," are you asking me if I think that's 3 inconsistent with the statute to say that someone 4 reports in person? I mean -- 5 BY MS. AUKERMAN: 6 Q. No. What I'm asking you, Mr. Beatty, is the statute 7 authorizes it to be done -- the verification to be 8 done either in person or in a manner prescribed by the 9 department. 10 So would you agree that the Michigan State 11 Police could have prescribed a different manner than 12 in person under the statute? 13 MR. DAMICH: Objection. Form. Ambiguous. 14 THE WITNESS: Well, I think that form that 15 you're looking at -- I forget the exhibit number -- 16 but that's the general registration form. So I think 17 it's just the way you're looking at it. 18 It's consistent with the statute. It 19 appears to say the general rule is to do it in person. 20 The statute allows for another manner authorized by 21 the department. I referenced another form that 22 provides an opportunity to do certain things in 23 another manner as prescribed by the department. 24 So this may represent or appears to be 25 consistent with the statute that says do it in person.</p>
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<p>1 The other forms that says you can do these other 2 things not in person is the manner that's been 3 authorized by the department which is also consistent 4 with the statute.</p> <p>5 BY MS. AUKERMAN: 6 Q. Okay. So let's look at that other form, then. This 7 is Exhibit 4. Let's mark it as that. This is the 8 Michigan Sex Offender Registry Mail-in Update, 9 RI-004A. 10 (Plaintiffs' Exhibit No. 4 was marked.)</p> <p>11 BY MS. AUKERMAN: 12 Q. Do you recognize this form? 13 A. I do. 14 Q. So is this the form that is used to provide 15 information that can be provided by mail? To verify 16 information that can be provided by mail. 17 MR. DAMICH: Objection to vagueness. 18 THE WITNESS: Again, I'm looking at the 19 date. That's a March '21 form, so I don't know if 20 that form has been amended since then. I don't think 21 it -- if it has, it was any substantial amendment, but 22 that was certainly the form that was in effect when 23 this statute went into effect. 24 BY MS. AUKERMAN: 25 Q. Okay. And do you see that it allows for reporting</p>	<p>1 information about a temporary residence? 2 A. I see what you're highlighting there, yes. 3 Q. And telephone numbers, correct, under Section 3? 4 A. Yes. 5 Q. Email identifiers, correct? 6 A. Yes. 7 Q. Vehicles, correct? 8 A. Yes. 9 Q. Mobile home, correct? 10 A. Yes. 11 Q. Okay. So those are the types of information that the 12 Michigan State Police has decided can be reported by 13 mail, correct? 14 A. Yes. 15 Q. Okay. So going back then to Exhibit 5, with respect 16 to addresses, employment, schooling, and name changes, 17 that must be reported in person according to this 18 form. Is that correct? 19 A. Yes. 20 Q. Okay. So my question is since the statute allows the 21 Michigan State Police to authorize a different manner 22 of reporting, who made the decision that reporting of 23 addresses, employment, name changes, and education 24 would have to be done in person? 25 MR. DAMICH: Objection. Form and</p>
<p>Page 53</p> <p>1 foundation. Ambiguous. 2 THE WITNESS: I recall when the forms were 3 being developed -- again, this was discussions through 4 representatives at the attorney general's office, I 5 believe, also assisted in vetting the draft of those 6 forms. I think the concerns that were expressed at 7 this time were basic reporting of address, employment, 8 those kind of core issues that, you know, at some 9 point if they're registering and the responsibility of 10 the registry is that has the general rule of reporting 11 in person, that there are certain things that should 12 be reported in person, so that you have an opportunity 13 to do the -- you know, what statute expects us to do. 14 So who made the decision? I don't know the 15 answer of who ultimately made the decision. A, 16 various people offered opinions. The forms were 17 created. They were finalized, and the form represents 18 the decision that was made. The deliberations, the 19 process that went into how we got to that form, you 20 know, who made it, what specific input an individual 21 person gave into that form is all part of the 22 deliberations that went into the final product. 23 The final product which I believe that 24 you've shown in the statute is entirely consistent 25 with the statute is this is what gets reported in</p>	<p>Page 54</p> <p>1 person. This is what you can report by mail. 2 BY MS. AUKERMAN: 3 Q. It would have also been consistent with the statute to 4 allow for online reporting -- excuse me -- online 5 verification of an address change, correct? 6 MR. DAMICH: Objection. Argumentative. 7 THE WITNESS: I don't -- I mean, I suppose, 8 yes. 9 BY MS. AUKERMAN: 10 Q. And it would have also been consistent to allow for 11 online verification -- or, excuse me. 12 It would have also been consistent to allow 13 for online verification of an address change, correct? 14 MR. DAMICH: Objection. Form and 15 foundation. It's argumentative. 16 THE WITNESS: Yes. Any manner as prescribed 17 by as the department, can leave it up to your 18 imagination of any manner as, you know -- you can have 19 a cousin once removed posted on a Facebook page, and 20 we can accept that as a new address. That would be 21 any manner approved by the department. It doesn't 22 really seem to make a lot of sense that that's what 23 the legislature wants us to do but... 24 BY MS. AUKERMAN: 25 Q. I believe you testified that various people were</p>

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<p>1 consulted in the decision about what the manner 2 prescribed by the department should be or whether it 3 should be in person. Who is consulted?</p> <p>4 A. Again, the core group would have been persons from the 5 SOR Unit. Myself, at the time, John Gemellaro was 6 another attorney who has since left the department who 7 was in my section with me, was involved in those 8 discussions. And then the person at the attorney 9 general's office previously referenced.</p> <p>10 Q. Were registrants consulted at all?</p> <p>11 A. Registrants?</p> <p>12 Q. Yes.</p> <p>13 A. Yeah, no. I don't believe so. As far as their 14 opinion?</p> <p>15 Q. Yes.</p> <p>16 A. I think, arguably, that would be an improper -- we can 17 access information in the registry for purposes that 18 are authorized under the act. And reaching out to 19 registrants, using the registry to contact individuals 20 to talk about things that -- you know, it's the 21 department's responsibility. If the legislature 22 intended us to form a work group or a task force or 23 involve other persons in the decisions of the 24 department, then they know how to do that. They could 25 have directed us to do that.</p>	<p>1 Q. Was the question of what the manner prescribed by the 2 department should be put out for notice and comment?</p> <p>3 A. I don't believe so.</p> <p>4 Q. Were there any official rules or regulations 5 promulgated by the department regarding what that 6 manner prescribed of the department should be?</p> <p>7 A. No.</p> <p>8 Q. If the public wants to find out what the manner 9 prescribed by the department is, how would the public 10 find that out?</p> <p>11 A. They can look at the Explanation of Duties that the 12 registrants sign. It says report in person. And then 13 for the other form that is the manner prescribed by 14 the department, they can see the opportunities they 15 have to do something other than report in person. Or 16 they can read the act itself and apply it.</p> <p>17 Q. So, to your knowledge, is the Explanation of Duties 18 the only place where it shows what the manner 19 prescribed by the department is for addresses, 20 employment, higher education, and name changes?</p> <p>21 MR. DAMICH: Objection. Compound. 22 Confusing. Ambiguous.</p> <p>23 THE WITNESS: Yeah. I don't understand 24 what -- the Michigan State Police is responsible for 25 maintaining a registry. We're not responsible for</p>
<p>Page 57</p> <p>1 giving legal advice to the public or -- 2 BY MS. AUERMAN: 3 Q. Yeah, my question is you testified that the 4 Explanation of Duties is where one would look to 5 determine what the manner prescribed by the department 6 is for verification of name changes, address, work, 7 and higher education, correct? 8 MR. DAMICH: Objection. Compound. 9 Confusing. 10 THE WITNESS: Well, again, members of the 11 public can look at the statute, the publicly 12 available forms, or talk to private legal counsel if 13 they have a question about a law and how it should be 14 interpreted. 15 BY MS. AUERMAN: 16 Q. The statute says that it can be done either in person 17 or a manner prescribed by the department. So isn't it 18 accurate to say that in reading the statute you 19 wouldn't know whether the Michigan State Police has 20 prescribed something other than in person, correct? 21 MR. DAMICH: Objection. Argumentative. 22 Ambiguous. 23 THE WITNESS: So, again, if I was a member 24 of the public and not a lawyer and I saw that, then I 25 would say I would need to report in person unless or</p>	<p>Page 58</p> <p>1 until I learn I can do something different consistent 2 with the statute. 3 BY MS. AUERMAN: 4 Q. Is there anyplace other than the Explanation of Duties 5 where the Michigan State Police has posted or made 6 publicly available what the manner prescribed by the 7 department is for address changes, employment, name 8 changes, and higher education? 9 A. I believe the publicly available documents that we 10 referenced earlier on the new SOR that are on the 11 public website copies, the ones that went to the 12 prosecutor, and I believe the ones that went to 13 offenders, talk about what they can verify, you know, 14 other than in person. And I believe they link to the 15 forms that can be used and described with some 16 specificity those things they can do outside of doing 17 in person. 18 I believe that the letters that went to the 19 offenders themselves describes exactly the manner 20 that's been prescribed and authorized by the 21 department. Those letters are publicly available, 22 so any member of the public can get the same 23 information that the individual offenders had on the 24 manner prescribed by the department other than 25 reporting in person.</p>

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<p>1 Q. Why did the Michigan State Police decide that it would 2 require in-person reporting -- excuse me. 3 Why did the Michigan State Police decide 4 that it would require in-person verification for this 5 type of information rather than some other manner? 6 MR. DAMICH: Objection. Form. Foundation. 7 THE WITNESS: Are you asking what internal 8 deliberations took place before coming to the final 9 version that was put out publically? 10 BY MS. AUKERMAN: 11 Q. No. I'm asking what the rationale is for in-person 12 verification. 13 A. Are you asking for my rationale or -- 14 Q. I'm asking for the reasons that it was decided that it 15 should be in-person verification. 16 A. Again, I don't recall the specific discussions, but I 17 think legal was concerned that basic requirements 18 regarding -- and I think it was, you know, knowledge 19 that people often falsely or misreport their 20 addresses, that certain information having the person 21 come in in person for verifying an address is 22 necessary because -- in part, because of the new 23 willful requirement. 24 So if everything could just -- you know, if 25 the department could just receive presumably an</p>	<p>1 anonymous letter saying here's my new address, and 2 that wasn't the actual address, and then we find out 3 that the person is not actually there, there would 4 never be a basis to be able to show there was a 5 willful violation of the statute as required by the 6 legislature because they would go, "Oh, I didn't send 7 that letter. I don't know who sent that letter. I've 8 always reported I'm over here," and, you know, those 9 basic things. As you're going to come in person, we 10 can see that it's you telling us that this is your new 11 address. So if law enforcement or the Michigan State 12 Police found that you weren't at that address, then we 13 can articulate a willful violation. 14 If we just constantly change the registry 15 because everyone's mother, cousin, brother, sister 16 started sending in a random notice of new addresses, 17 there would never be a registry as the legislature 18 wants us to maintain a registrant. 19 Q. So we looked at the exhibit that's the mail-in 20 verification form. That's something that registrants 21 sign and submit, correct, provide information to 22 update it? 23 A. Yes. 24 Q. And the Michigan State Police thought that was 25 acceptable for certain types of information, correct?</p>
<p>Page 61</p> <p>1 A. Yes. 2 Q. Okay. The Michigan State Police takes the position 3 that volunteer work must be reported alongside 4 employment, correct? 5 A. I'm not familiar with the volunteer. When you say 6 takes a position, take a position where? 7 Q. We'll go back to that, then, later. 8 Okay. Let's go back to the statute here. 9 This is, again, Exhibit 2, MCL 28.725. Let's look at 10 Subsection 2. This relates to reporting changes of 11 vehicle information, email addresses, internet 12 identifiers, telephone numbers, and travel, correct? 13 A. Correct. 14 Q. And, again, it provides that changes shall be reported 15 in the manner prescribed by the department, correct? 16 A. Correct. 17 Q. Okay. And the Michigan State Police has prescribed a 18 manner of reporting those types of changes which is 19 mail-in reporting; is that correct? 20 A. Yes. I believe so, yes. 21 Q. Who made that decision? 22 MR. DAMICH: Objection. Form. Foundation. 23 THE WITNESS: Again, I think it's the same 24 process of the same internal work group, the various 25 persons I previously referenced. The end product of</p>	<p>Page 62</p> <p>1 that process is the form, and that is the manner 2 prescribed by the department. 3 BY MS. AUKERMAN: 4 Q. Did the Michigan State Police take public comment? 5 A. No. 6 Q. Did it promulgate a regulation? 7 A. No. 8 Q. Is the manner prescribed for reporting of vehicles, 9 email, internet identifiers, phone numbers, and travel 10 publically posted anywhere other than on the form, the 11 mail-in verification form? 12 A. Yeah. I believe it's referenced in the letters to 13 offenders and the letters to prosecutors that I 14 previously referenced on the SOR Unit's Web page with 15 links to the forms themselves that describe the 16 specific items that can be reported other than in 17 person. And that's publically available on our 18 website. 19 Q. So with respect to the letter to registrants, that 20 went out in March of 2021, correct? 21 A. Around the time of the statute. The exact date, I'm 22 not sure, but that sounds right, yes. 23 Q. Has that letter been sent to registrants who have 24 registered since that time, new registrants? 25 A. I don't know. I don't. It's certainly publically</p>

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<p>1 available.</p> <p>2 Q. Okay. Would you agree that many people in Michigan</p> <p>3 today conduct much of their business online?</p> <p>4 MR. DAMICH: Objection. Form. Foundation.</p> <p>5 THE WITNESS: Lots of people. There's far</p> <p>6 more people, I believe, who are doing things online</p> <p>7 than not doing online. Quantifying it, I'm not</p> <p>8 comfortable doing.</p> <p>9 BY MS. AUKERMAN:</p> <p>10 Q. Why did the Michigan State Police decide to require</p> <p>11 mail reporting rather than online reporting?</p> <p>12 MR. DAMICH: Objection. Argumentative.</p> <p>13 THE WITNESS: Because I think mail reporting</p> <p>14 is applicable to everybody. Online reporting would be</p> <p>15 excluding persons who don't go online. And I think</p> <p>16 it's along the lines of like electronic signatures.</p> <p>17 You can offer electronic signatures, but I believe</p> <p>18 that you have to still authorize or allow people to</p> <p>19 sign paper if they want to sign paper.</p> <p>20 BY MS. AUKERMAN:</p> <p>21 Q. You can have both. You can have online and mail,</p> <p>22 correct?</p> <p>23 A. Well --</p> <p>24 MR. DAMICH: Objection. Form.</p> <p>25 Argumentative.</p>	<p>1 THE WITNESS: Can we have both? I suppose,</p> <p>2 but then now we've got two processes in place for this</p> <p>3 information coming in.</p> <p>4 The other thing is the SOR Unit is not a</p> <p>5 local registry in authority as defined under the</p> <p>6 statute. So when you're talking about reporting,</p> <p>7 verifying, mailing, doing those types of things, you</p> <p>8 know, people can report to any local police agency and</p> <p>9 do these things. It's not necessarily the Michigan</p> <p>10 State Police.</p> <p>11 BY MS. AUKERMAN:</p> <p>12 Q. Did the Michigan State Police explore the possibility</p> <p>13 of allowing online reporting?</p> <p>14 A. I don't recall a discussion of online reporting. If</p> <p>15 there was, it would have went along the same lines of</p> <p>16 at some point if the legislature, if we're required</p> <p>17 from an enforcement standpoint to show a willful</p> <p>18 violation, you know, the eight degrees of separation</p> <p>19 by having everything go online, you can always avoid</p> <p>20 responsibility under the act by saying, "Well, I</p> <p>21 didn't send that," or "That wasn't sent by me, so,</p> <p>22 therefore, I never received the email back, or I never</p> <p>23 received this 'cause my computer was down.</p> <p>24 So the end result of the manner prescribed</p> <p>25 by the department is reflected in the forms. That is</p>
<p>Page 65</p> <p>1 and are the things that you can do other than in</p> <p>2 person.</p> <p>3 Q. Are you -- when you mail something, do you get a</p> <p>4 receipt that you've mailed it?</p> <p>5 A. As a general matter, I don't know that. You know,</p> <p>6 individual mailings get sent return receipt</p> <p>7 restricted. I do know that there were certain</p> <p>8 requirements from the litigation that had to be done</p> <p>9 by the department and how things were sent, and some</p> <p>10 report of some kind that was done by the post office.</p> <p>11 I don't know the details, but I know that there was</p> <p>12 something that had to be done on the litigation side</p> <p>13 to the mass mailings to --</p> <p>14 Q. Let me stop you 'cause that's not my question. My</p> <p>15 question is if you're a registrant mailing in the mail</p> <p>16 verification form, how do you prove that you mailed</p> <p>17 it?</p> <p>18 MR. DAMICH: Objection. Foundation.</p> <p>19 THE WITNESS: Well, you would say you mailed</p> <p>20 it. And I suppose, you know, at the end result is in</p> <p>21 order to show violation, you have to show a willful</p> <p>22 violation. And I think that might be part of the</p> <p>23 reason why things like internet identifiers or IP</p> <p>24 addresses in the scale of information that the app</p> <p>25 wants to keep track of versus employment and residence</p>	<p>Page 66</p> <p>1 type of information in person. I think that just</p> <p>2 highlights why those are still required to be in</p> <p>3 person and why some in the big scheme of things are</p> <p>4 less significant.</p> <p>5 BY MS. AUKERMAN:</p> <p>6 Q. Did the Michigan State Police explore the possibility</p> <p>7 of phone reporting?</p> <p>8 A. I don't ever recall phone reporting.</p> <p>9 Q. Are you aware that some probationers and parolees have</p> <p>10 phone-only reporting?</p> <p>11 MR. DAMICH: Objection. Form. Foundation.</p> <p>12 THE WITNESS: We're not a department of</p> <p>13 probation nor are we a department of corrections, so I</p> <p>14 can't speak to what other people do or don't do.</p> <p>15 MS. AUKERMAN: Let's look at another exhibit</p> <p>16 here. This is Exhibit 3. This is a contract between</p> <p>17 the Michigan State Police -- or actually, it's the</p> <p>18 Department of Technology, Management, and Budget with</p> <p>19 Lexis/Nexis Coplogic Solutions.</p> <p>20 (Plaintiffs' Exhibit No. 3 was marked.)</p> <p>21 BY MS. AUKERMAN:</p> <p>22 Q. Are you familiar with this contract?</p> <p>23 A. It looks familiar.</p> <p>24 Q. Okay. Let's scroll down to page 94. This contract</p> <p>25 relates to the Michigan SOR database, and I'm showing</p>

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<p>1 you specifications for the contract. 2 Let's look at Specification 70. Do you see 3 there that it requires -- that it states that the 4 system shall allow offenders to sign up and receive 5 email notification -- that's not the right one. 6 Okay. I'm sorry. It's Specification 77. 7 It states that the system must allow offenders to 8 complete updates through their phones or other 9 electronic devices, iPad, iPhone, Android, tablet, et 10 cetera. 11 Do you see that? 12 A. Okay. 13 Q. Registrants aren't currently able to update 14 information through electronic devices, correct? 15 A. Correct. To my understanding, correct. 16 Q. Do you know if the system has the capacity for that to 17 happen? 18 MR. DAMICH: Objection. Foundation. 19 THE WITNESS: Personally, I do not. 20 BY MS. AUKERMAN: 21 Q. Okay. Let's talk a little bit about how mail-in 22 reporting works in process. So the Michigan State 23 Police decided that it would prescribe mail as a 24 manner for updating information for vehicle, email, 25 internet identifier, phone numbers, and travel.</p>	<p>1 What steps did it then take to implement 2 that decision? 3 MR. DAMICH: Objection. Form. Ambiguous. 4 THE WITNESS: Once the form was finalized, 5 then the notifications -- the forms were finalized. 6 That was communicated to all registrants on those same 7 publically available documents that I reference 8 previously, and certainly the letters that went to 9 prosecutors. And I'm pretty sure, but I'm not sure. 10 But I believe there's one that was just general law 11 enforcement or at least copies of the prosecutor -- 12 maybe this is what happened. Copies of the 13 prosecutor's letters were sent to the sheriff's 14 association, the chief of police. I recall those 15 copies of those letters, at least those copies of 16 those letters being sent. So someone coming into a 17 local registering authority would presumably have all 18 the same information that any registrant was given 19 when those letters went out. 20 BY MS. AUKERMAN: 21 Q. Was any information provided to law enforcement how 22 they're supposed to handle the mail-in updates? 23 A. That, I -- if you can go to the form itself 'cause 24 usually the form will say. It's been a while since 25 I've seen the form itself, the mail verification form.</p>
<p>Page 69</p> <p>1 Q. So this again is Exhibit 4, and I'll scroll down here. 2 It says to submit the form by first-class mail to 3 local law enforcement agency, sheriff's office, or 4 Michigan State Police post. And then there's an 5 Explanation of Duties. I don't see any instructions 6 to law enforcement itself. 7 A. Yeah, there may be something. I know that the 8 registry itself has user communications that go in and 9 out to anyone who's a user. And, certainly, any local 10 registering authority would be a user of the system. 11 So whatever communications have gone out in 12 that regard from the registrant's responsibility is 13 mailed to one of those three. At that point, it 14 becomes whoever receives it responsibility to make 15 sure it gets entered. 16 Q. So these have to be mailed within three business days, 17 correct? 18 A. I believe that's what the act says. 19 Q. How do you count the three business days? 20 Is it from when the person signs the form? 21 A. Again, I don't know that we've gone into that level of 22 weeds 'cause ultimately it would be a matter of 23 demonstrating whether they willfully violated it. And 24 I'm assuming there's -- as with any litigation -- 25 counting days, there's rules. There's case law that</p>	<p>Page 70</p> <p>1 sort out the timing of those things. 2 And I highly doubt in this day in age that 3 if it came in five business days as opposed to three, 4 that a prosecutor would pursue a violation. But, 5 again, it would be a the responsibility of that 6 prosecuting official to demonstrate a willful 7 violation, and they would then have to show that the 8 person willfully failed to mail within three business 9 days. 10 MR. DAMICH: We're getting to about an hour 11 and a half in. Do you mind if we take a quick break? 12 MS. AUKERMAN: Well, let me just finish this 13 line of questions, and then we'll take a break if 14 that's okay. 15 MR. DAMICH: That's fine. 16 BY MS. AUKERMAN: 17 Q. So let's say a person gets a new email address that 18 they have to report. They get it on a Thursday, and 19 put it in mailbox on Sunday. But the post office 20 doesn't pick it up and stamp it until Monday. 21 Has a person violated the statute? 22 MR. DAMICH: Objection. Confusing. 23 Ambiguous. 24 BY MS. AUKERMAN: 25 Q. You can answer.</p>

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<p>1 A. Again, that would be up to a prosecutor to decide 2 whether it's a willful violation. Our members have 3 been instructed for quite sometime to not take any 4 direct enforcement action against any registrant, you 5 know, for a SOR violation. If they believe a 6 violation has occurred, they're instructed to submit 7 it on paper to the local prosecutor to make whatever 8 decision is appropriate.</p> <p>9 Q. Is there any guidance available about whether the 10 three days runs from the time a person puts the 11 envelope in the mail or the time that the police 12 received the letter?</p> <p>13 A. Again, we read the statute. The statute says not more 14 than three business days, so that language is carried 15 over onto the form that it should be sent within those 16 three business days. The legislature didn't give us 17 any further guidance that we can share on what that 18 means, and so I guess that would be up to the 19 individual court and prosecutor to decide whether a 20 willful violation occurred on a specific occasion.</p> <p>21 Q. So there's nothing available to registrants to know 22 how the three business days are counted?</p> <p>23 MR. DAMICH: Objection. Asked and answered.</p> <p>24 THE WITNESS: There's nothing to be 25 available from the Michigan State Police since we</p>	<p>1 didn't write the statute nor are we going to give 2 legal advice and interpret something that's in the 3 statute that's not there.</p> <p>4 The form says mail within three business 5 days because the statute says those things have to be 6 reported within three days. The burden is on the 7 prosecutor and the courts to decide whether -- you 8 know, whatever county -- whether or not it's a willful 9 violation.</p> <p>10 BY MS. AUKERMAN:</p> <p>11 Q. Are you aware of any court decisions related to how 12 the three days are counted?</p> <p>13 A. I'm not.</p> <p>14 Q. And would you agree that there's no specific address 15 given on the form about where to send this to? This 16 is the mail-in registration -- mail-in verification 17 form.</p> <p>18 A. You go to your local registering authority. So if you 19 find it going to do your in-person reporting, then 20 whatever that address is, you would be covered there. 21 If it's a local registering authority, then pick one.</p> <p>22 Q. So it says -- the form says that it can be sent to 23 local law enforcement agency, sheriff's office, or 24 Michigan State Police post.</p> <p>25 How do registrants know which one they send</p>
<p>Page 73</p> <p>1 it to?</p> <p>2 A. They can send it to any one; I believe. I mean, it 3 wouldn't make sense to send it to some police 4 department at the other end of the state. Local 5 registering authority -- I'd have to look at the 6 statute.</p> <p>7 Doesn't it say local registering authority 8 in proximity to -- you'd have to look at the statute 9 itself, but, you know, I don't think it takes much 10 common sense to say wherever I go in person as I'm 11 required to do. Mail it there, and I don't have to go 12 in person. Somehow you can get it into your map or 13 your Waze, or, you know, where it's at to show up 14 at a post or a local police department. Just copy 15 down that address and mail it if that's what you want 16 to do to avoid going in person.</p> <p>17 Q. Do you know how quickly mail-in updates are entered 18 into the SOR database by the agencies that receive 19 them?</p> <p>20 MR. DAMICH: Objection. Form. Foundation.</p> <p>21 THE WITNESS: No, I don't.</p> <p>22 BY MS. AUKERMAN:</p> <p>23 Q. Could it take weeks for staff to get around to 24 entering them?</p> <p>25 MR. DAMICH: Objection. Foundation.</p>	<p>Page 74</p> <p>1 THE WITNESS: I mean, it could be done 2 immediately. It could be not done at all. I can't 3 speak for the individual actions of someone else out 4 of my control. I would have a concern if a department 5 member was not entering this information promptly. 6 And if I was aware of that being in practice, then I 7 would seek to have that issue addressed. As for other 8 departments, I can't speak to them.</p> <p>9 BY MS. AUKERMAN:</p> <p>10 Q. Could it happen that a registrant mails this, say, to 11 the local MSP post, doesn't get entered right away, 12 and then later when they verified to their local law 13 enforcement agency, they're considered to have 14 violated SOR because there's no record in the system 15 yet that they reported that information on time?</p> <p>16 MR. DAMICH: Objection. Form. Ambiguous. 17 Compound. Confusing.</p> <p>18 THE WITNESS: I agree with all those 19 objections, but I would say it depends on the 20 situation. Could, theoretically, yes, you know, but 21 if someone mails it in, you still have to demonstrate 22 a willful violation. So I think the concerns you're 23 expressing are the concerns that we often heard 24 historically under the old SOR that was a big part of 25 your litigation regarding, quote/unquote, "technical</p>

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<p>1 violations."</p> <p>2 And I think not only the court opinion but</p> <p>3 the revised statute that requires proof of a willful</p> <p>4 violation alleviates many of those concerns. So, yes,</p> <p>5 can there be a delay, yes, under the old SOR and the</p> <p>6 things you previously litigated is that where maybe</p> <p>7 there was issues or concerns with technical</p> <p>8 violations. But at the end of the day, someone</p> <p>9 seeking a charge, swearing out a charge, or getting</p> <p>10 the charge would have to show that it was a willful</p> <p>11 violation.</p> <p>12 BY MS. AUKERMAN:</p> <p>13 Q. We talked about how when someone mails information</p> <p>14 they don't get a receipt showing that they mailed it</p> <p>15 in, correct?</p> <p>16 A. Correct. I'm not aware of a receipt process.</p> <p>17 Q. Do you ever use online portals where you submit</p> <p>18 something and then you get an email saying, you know,</p> <p>19 your form has been submitted?</p> <p>20 A. A "portal," can you be more specific of an example?</p> <p>21 Q. So you purchase something on Amazon, and Amazon then</p> <p>22 sends you an email or text saying, you know,</p> <p>23 congratulations, you've purchased your water filter.</p> <p>24 Are there -- so my question is when you --</p> <p>25 can you set up systems online where you get a receipt</p>	<p>1 after entering your information?</p> <p>2 A. I'm confused because you're asking about a mail-in</p> <p>3 form and you ask whether or not there's a receipt</p> <p>4 generated by a mail-in form, and I said I don't</p> <p>5 believe there is.</p> <p>6 As far as online, that form is not accepted</p> <p>7 online, and I don't know the capabilities of an online</p> <p>8 program for generating receipts. Have I received</p> <p>9 things from Amazon? Yes. But you asked about a</p> <p>10 mail-in form and a receipt on a mail-in form, and I'm</p> <p>11 not aware of receipts on a mail-in form.</p> <p>12 Q. Are you aware that one can update one's address with</p> <p>13 the Secretary of State online?</p> <p>14 A. I'm not. I mean, I think I renewed my registration</p> <p>15 online. I know there's some things you can do online</p> <p>16 and some things in person. Whether it's your address</p> <p>17 or not, yeah, I don't know the specifics.</p> <p>18 MS. AUKERMAN: Okay. Let's take a break and</p> <p>19 go off the record.</p> <p>20 (From 10:38 a.m. to 10:50 a.m., recess was</p> <p>21 taken.)</p> <p>22 (At 10:39 a.m., Mr. Lin and Ms. Elbakr exit</p> <p>23 the videoconference.)</p> <p>24 BY MS. AUKERMAN:</p> <p>25 Q. We talked a bit about how the documents that have been</p>
<p>Page 77</p> <p>1 posted on the state police website, the sex offender</p> <p>2 registry website, of the documents that were used to</p> <p>3 share information with law enforcement, prosecutors,</p> <p>4 PAAM, and registrants, correct?</p> <p>5 A. I believe. I haven't checked it today, but the last</p> <p>6 time I was on there, they were on there.</p> <p>7 Q. Okay. So let's take a -- I looked at that quickly</p> <p>8 while we were -- although, it's not letting me share</p> <p>9 that. Hold on.</p> <p>10 Okay. Here we go. Can you see the Michigan</p> <p>11 State Police sex offender registry website?</p> <p>12 A. I can.</p> <p>13 Q. And do you see the notices that are listed there?</p> <p>14 A. Um-hmm, yes.</p> <p>15 Q. Okay. And I went and reviewed these notices. I can</p> <p>16 tell you that all of the notices except the last</p> <p>17 notification letter to registrants advising of</p> <p>18 Michigan Sex Offender Registration Act amendment</p> <p>19 effected March 24th, 2021. All the other letters</p> <p>20 listed here relate to the Does 2 case.</p> <p>21 Do you have a reason to dispute that?</p> <p>22 A. The only qualification I would make is those earlier</p> <p>23 letters -- I believe at least some of them -- made</p> <p>24 clear that nothing about the Does case affects your</p> <p>25 obligations under the new SOR. I think there's a</p>	<p>Page 78</p> <p>1 reference in one or more of those documents that make</p> <p>2 clear that whatever happened in Does 2 didn't change</p> <p>3 your reporting obligations effected March 24th of</p> <p>4 2021, which I think is also consistent with the</p> <p>5 information that was on the ACLU website for</p> <p>6 requirements.</p> <p>7 Q. Okay. But you don't see any communications there to</p> <p>8 the Prosecuting Attorneys Association of Michigan</p> <p>9 about the new statute data?</p> <p>10 A. I referenced letters that are publicly available</p> <p>11 information. If you can put the screen back up, that</p> <p>12 information is also publicly available.</p> <p>13 Q. Where is that? I'll put it back up. Do you see it?</p> <p>14 A. Yeah, click on the notification letter to registrants.</p> <p>15 Q. Okay. We'll talk about that, but aside from the</p> <p>16 note -- I said aside from the notification letter to</p> <p>17 registrants, are there any documents here that</p> <p>18 describe the new -- let me rephrase that.</p> <p>19 When you referred earlier to the documents</p> <p>20 that were provided to law enforcement and prosecutors</p> <p>21 and PAAM regarding the new statute, are these the</p> <p>22 documents you're referring to?</p> <p>23 A. Again, I believe we're talking that happened sometime</p> <p>24 ago, but the letters of prosecutors -- everything</p> <p>25 that's up there regarding those Does references the</p>

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<p>1 new statute. This, what you're highlighting on there, 2 also is publically available to any of those, and I 3 believe there was a communication that shared that 4 information to the sheriff's association. I can't 5 speak for the attorney general's office, but I believe 6 something was sent from the attorney general's office 7 to PAAM regarding the new statute.</p> <p>8 Q. Okay. That's not posted here, correct?</p> <p>9 A. No.</p> <p>10 Q. Okay.</p> <p>11 A. I don't see it there.</p> <p>12 Q. Are you aware of any communications other than what's 13 posted here in the letter to PAAM that you mentioned 14 that went out to law enforcement or prosecutors 15 regarding the new statute?</p> <p>16 A. Again, I would defer to what I -- I expressed to the 17 SOR Unit that we don't give legal advice. They are 18 encouraged to share publically available information, 19 so to the extent they may receive individual 20 communication from anyone, they can certainly direct 21 them to any of these documents that are on there.</p> <p>22 Q. That's not my condition, Mr. Beatty. My question was 23 whether or not you're aware of any communications --</p> <p>24 MS. AUKERMAN: Actually, Ms. Apley, could 25 you read back my question, please.</p>	<p>1 (At 10:55 a.m., the record was read back.) 2 THE WITNESS: Yes. And I recalled that 3 there were some communication, and I may have been 4 mistaken in that regard, regarding specific 5 communication. This information and the notification 6 letter to registrants, again, my recollection is that 7 was conveyed or shared at some point in time, but it's 8 nevertheless, publically available. And I don't 9 believe that the SORA requires us to notify licensed 10 attorneys or prosecutors of every time a new statute 11 goes into effect, nor do I think we're required to do 12 so by any court regarding the new statute.</p> <p>13 BY MS. AUKERMAN:</p> <p>14 Q. Let's talk about the drafting process for forms and 15 letters and documents related to the registry. You 16 mentioned before that there's a form drafting process. 17 Can you just briefly describe what that 18 involved?</p> <p>19 A. Not without reviewing our written directives and 20 policy on form creation and drafting. But usually as 21 a nutshell version, every form, there's a specific 22 worksite or at least bureau that has responsibility 23 for that form based on the nature and subject matter 24 of that document.</p> <p>25 When a revision needs to be made or someone</p>
<p>Page 81</p> <p>1 thinks a revision should be made, it goes to that 2 forms coordinator for whatever that form is, and then, 3 you know, the process and the directive is followed. 4 The subject matter expects review the form, make 5 whatever recommendation. If a decision is made that a 6 form needs to be updated or changed, the form's 7 coordinator submits it through that process to, you 8 know, the forms section which I believe is the -- 9 found within the planning, research, and accreditation 10 section. And then the department's form manager 11 processes that request, does the reformatting, puts it 12 in whatever the subject matter experts are requesting 13 information, but does, you know, the style guide and 14 parameter and all that stuff. And then once that 15 draft is done, then there's a process of review. And 16 once it's finalized and posted, then it becomes an 17 official form of the department.</p> <p>18 Q. When you say "a process of review," what's the process 19 of review?</p> <p>20 A. Again, whoever, various people who look at the form 21 who may have an interest in the form have an 22 opportunity to comment on it. And I'm talking about 23 internal MSP comment. And then, you know, going 24 through that process, then once the form is finalized, 25 once it's published, then it becomes a form. And then</p>	<p>Page 82</p> <p>1 the form is the decision of the department. 2 Q. Okay. So how does that process work for with forms 3 related to the registry?</p> <p>4 A. If something comes to someone's attention that 5 something needs to be addressed on the form, most 6 often it would probably come through the SOR Unit 7 first. Like, hey, here's your form. There's a typo, 8 or this word is misspelled, or whatever it is. And if 9 they see it, if it's something quick administrative 10 like that, then -- or it's something that's more 11 substantive because perhaps of a law change or 12 something like that, then, again, it gets initiated 13 through the worksite that has responsibility for that 14 form and then goes up from there.</p> <p>15 Q. You said that the subject matter experts are involved. 16 Who are the subject matter experts for forms 17 related to the registry?</p> <p>18 A. There would be any number, right. So as far as the 19 registry, it's kind of unique 'cause you're talking 20 about forms in general and then transition to SOR 21 forms.</p> <p>22 The SOR form is very much directed and 23 dictated by the language of the statute. If the 24 statute says you shall collect, where we see "shall," 25 that ends up on the form. So we work very hard to be</p>

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<p>1 consistent with the statute, what the legislature 2 wants us to do or mandates us to do, then that's on 3 there.</p> <p>4 And so when I say "subject matter experts," 5 there's any number that are involved with SOR. So if 6 you're asking about, you know, entering into what used 7 to be OffenderWatch and is now the new registry, I 8 don't -- I personally have never been on the nonpublic 9 side of the registry. I don't know the details of how 10 things work, how you enter things, how you -- like, I 11 don't know any of that stuff. So I would say that the 12 SOR Unit are the subject matter experts on managing 13 the registry.</p> <p>14 Q. Okay. So let's take a specific example. Let's go 15 back to -- I'll share my screen. This is Exhibit 5. 16 This is on basic verification, registration and 17 verification update form.</p> <p>18 A. Okay.</p> <p>19 Q. So looking at that, do you know when this form was 20 originally created?</p> <p>21 A. This form, some version of this form, I mean, has been 22 around, I believe, since the first SOR went first into 23 effect. I mean, historically, I'm sure somewhere 24 archived within the state are the older versions of 25 this form.</p>	<p>1 Q. Okay. And then were changes made to this form after 2 the 2021 amendments to the statute?</p> <p>3 A. Well, going through our internal written directive 4 system and pulling up the current form, that's -- 5 every form has a number, and it has a date. So what 6 you're showing me was revised in March of 2022, so I 7 can say it's current as of March '22. It may still be 8 current today, but without checking, I couldn't tell 9 you.</p> <p>10 Q. So my question was has it been changed since the form 11 that was in effect before the March 2021 statute?</p> <p>12 A. Again, without checking our written directive system 13 and seeing if the current version of the RI-004 has a 14 different date, I don't recall if there's been changes 15 since then or not. I see a lot of forms. We have 16 hundreds and hundreds of department forms. There may 17 have been changes. There may not have been.</p> <p>18 Q. Were you involved in revisions to this form?</p> <p>19 A. If there were revisions made, it would have come 20 across my desk. Again, I review many, many things. 21 It would take going into the system and seeing 22 whatever the current date of the form is, and I can 23 tell you if it's been amended since then. But I don't 24 know as -- I can tell you what you're showing me is 25 current as of March whatever the date is, March of</p>
<p>Page 85</p> <p>1 2022.</p> <p>2 Q. So setting aside that there could have been changes in 3 March 2022, I believe that this is the most recent 4 form that was provided to us in discovery, so if 5 there's more recent ones, they should have been 6 provided. But, anyway, I believe this is most recent 7 form that we have.</p> <p>8 So setting that aside, do you see how on 9 page 3 there's an explanation of duties to register as 10 a sex offender?</p> <p>11 A. Correct.</p> <p>12 Q. And would you agree that the duties of people who are 13 on the registry changed somewhat after March of 2021?</p> <p>14 A. That's a very broad question, but I can --</p> <p>15 Q. Well, let me restate that.</p> <p>16 Are the duties to register -- are the duties 17 for people on the registry the same after March 2021 18 as they were before March 2021?</p> <p>19 A. I think it's safe to say that there were changes 20 overall between the old SOR and new SOR, and this form 21 as of March '22 was designed to be an accurate 22 reflection of what was required under the new SOR at 23 that point in time.</p> <p>24 Q. So this form would have been amended to reflect the 25 new SOR?</p>	<p>Page 86</p> <p>1 A. Yeah. And I think the date, the March 2022 -- yeah, 2 this -- I know the form was revised prior to the 3 statute going into effect, so that there was a form in 4 place when the new SOR went into effect.</p> <p>5 Q. And who was involved in revising the form for when the 6 new SOR went into effect?</p> <p>7 A. It would be all the same persons who have interest in 8 their own individual areas relation to SOR, so there's 9 input from the SOR Unit. There would have been input 10 from us. There would have been input from the same 11 persons at the attorney general's office we talked 12 about. Whatever anyone's area is, I believe input was 13 obtained. The end result of that decision is the 14 form. The form is the manner prescribed by the 15 department for that form.</p> <p>16 Q. So let's look at the bottom on page 5. This is a 17 statement that the person has to sign, and it says: 18 "I have read the above requirements and/or had them 19 read to me and I understand my registration duties." 20 Do you see that?</p> <p>21 A. I do.</p> <p>22 Q. Do you know when that language first appeared on the 23 form?</p> <p>24 A. I do not.</p> <p>25 Q. Okay. Were you involved in drafting that language?</p>

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<p>1 A. Again, I may have been. I don't recall when it was in 2 there, or if it was always in there, or when it was in 3 there. These are conversations from a long time ago. 4 You'd have to go back each form and see when 5 you first saw that language, and then I could probably 6 take my memory back to see if I recall my involvement 7 with that. If it predates 2013, then I had nothing to 8 do with the addition of that language 'cause that's 9 when I started with the department. 10 Q. Let me show you -- let's mark this as Exhibit 6. This 11 is Explanation of Duties Form that was entered into 12 evidence during Does 1. 13 (Plaintiffs' Exhibit No. 6 was marked.) 14 BY MS. AUKERMAN: 15 Q. Do you see that? 16 A. I see a form, yes. 17 Q. And do you see that at the bottom before the signature 18 it simply states, "I acknowledge that I have read the 19 above requirements or [sic] had them read to me," 20 correct? 21 A. I see that, yes. 22 Q. So in the past, registrants didn't have to sign that 23 they understood their duties, correct? 24 A. Again, that form you're showing me was adopted. It's 25 hard to see, but I believe it says July of 2011 which</p>	<p>1 predates my employment with the department. But I 2 believe -- I believe -- you know, I don't recall when 3 it was added. It may have been added as part of the 4 new statute, but it may also have something to do with 5 the requirements that they would be able to 6 demonstrate a willful violation. 7 Q. Can you explain that? 8 A. Putting a form up -- 9 Q. Yeah. 10 A. -- as with anything, I mean, if you practice criminal 11 law and you take a plea, you make a record and say, do 12 you understand your rights as I've read them to you, 13 and the answer to that question has meaning. And I 14 think with a form, the answer to that question can 15 have meaning. 16 Q. I just want to show you the form again. So you 17 believe that this language may have been added to 18 address the changes in March 2021 for the willfulness 19 requirement? 20 A. Again, I don't -- the form is the manner prescribed by 21 the department, right. The legislature said, hey, 22 create the form. I don't believe there's anything 23 about that form that is inconsistent with SORA and 24 whether it's as written or as previously written 25 whatever SORA was at that time.</p>
<p>Page 89</p> <p>1 Q. I mean as a former prosecutor, you are sort of 2 testifying that the form would be an expression of a 3 person's understanding that would then be used to 4 demonstrate willfulness? 5 A. It could be used to demonstrate willfulness. 6 Q. Let's look at -- we talked about this a couple of 7 times, the registrant letter. Let's make this -- let 8 me share this. 9 This is Exhibit 7. This is a March 24, 10 2021, letter that was sent by the Michigan State 11 Police to registrants. 12 (Plaintiffs' Exhibit No. 7 was marked.) 13 BY MS. AUKERMAN: 14 Q. Do you recognize -- can you see this document? 15 A. I see it, and I recognize it. 16 Q. Okay. What was the process for drafting this letter? 17 A. Same as previously described, the persons from the SOR 18 Unit, myself, I believe Mr. Gemellaro was the other 19 attorney at the time, and representatives of the 20 attorney general's office. That internal work group 21 working together to read the statute and convey it 22 into a letter to offenders. 23 Q. How did you decide what information should be 24 included? 25 A. We read the statute. We apply the statutes, and</p>	<p>Page 90</p> <p>1 summarized it in a letter to registrants. 2 Q. Who ultimately signed off on the content of this 3 letter? 4 A. I don't know as far as who ultimately signed off. I'm 5 assuming the final -- I believe the final version, 6 those in the work group reached a consensus they were 7 satisfied with the information in the letter. That 8 included, as I said, representatives from the attorney 9 general's office. And once that consensus was 10 reached, the letter just was the letter. 11 Q. Would you agree that in drafting notices to the 12 public, the government should try to make them 13 understandable? 14 A. I think it's perfectly understandable. 15 Q. Okay. What steps were taken to make this notice 16 understandable? 17 A. Well, I mean, I suppose if you can't read, write, or 18 understand the English language, and I believe at the 19 end of the letter -- if you can scroll down -- every 20 person who received this letter was a member of the 21 class and was your client. And so that last line it 22 says if you have questions about this to reach out to 23 your legal counsel, is directing them to contact you 24 as their attorney to sort through any confusion they 25 may have.</p>

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<p>1 But if you can read, write, and understand 2 the English language, I believe this is an 3 understandable letter. But to the extent of any 4 confusion, they had attorneys they could talk to. The 5 Michigan State Police does not give legal advice. 6 Q. Are you familiar with programs that are used to take 7 tests and see if it is understandable at like a 8 seventh grade reading level, for example? 9 A. Personally, I'm not. And as a lawyer, I would have a 10 tremendous amount of concern with that because the 11 legislature has decided the text to use. We, in 12 applying what the legislature tells us to use, use the 13 language of the legislature. There's ample instances 14 any one of us as lawyers can point to in a statute and 15 say, man, that's confusing. They could have said that 16 something much better, but they didn't. And it's not 17 up to the Michigan State Police to bridge that gap. 18 If we're asked to do something and specific 19 language is used, then where you see all those quotes, 20 it's because we're not playing with the words. We 21 don't have a right to play with the words. It's not 22 our responsibility to play with the words or to bridge 23 any gaps where the legislature could have done 24 something more in a better way. 25 So I would not consent to the department and</p>	<p>1 try to describe specifically the requirement using 2 words from the statute. I would not advise the 3 department to use any program that changes those 4 words, even if they may be more understandable to some 5 readers. It's not an accurate reflection of the 6 statute, and I would have concerns for the department 7 doing that. 8 Q. So the letter -- your decision was to repeat text from 9 the statute verbatim rather than try to explain it in 10 a way that would be more understandable, but might not 11 be accurate. Is that fair to say? 12 MR. DAMICH: Objection. Form. 13 THE WITNESS: Yes. Our intention was to do 14 what the legislature told us to. If those words were 15 too big for some people to understand, they all have 16 an attorney representing them who can help them with 17 those big words. 18 BY MS. AUKERMAN: 19 Q. Okay. Were there any trainings conducted for law 20 enforcement about the new statute? 21 A. None that I'm aware of. And with litigation going on, 22 as far as I know, we have not done trainings of other 23 departments on how to interpret SOR. 24 We'll share information. We'll share the 25 letters. We'll share the copy of the letter to the</p>
<p>Page 93</p> <p>1 offenders. We'll refer them to the statute. We'll 2 refer them to their own legal counsel. 3 Q. Was there any outreach to the Michigan Department of 4 Corrections about how changes to SORA impact parole 5 and probation by the Michigan -- excuse me. Let me 6 rephrase that question. 7 Did the Michigan State Police reach out to 8 the Michigan Department of Corrections about how 9 changes to SORA impact probation and parole? 10 A. I can tell you that the Michigan Department of 11 Corrections and the Michigan State Police are both 12 represented by their Michigan Department of Attorney 13 General. I believe there was triangulation of some 14 messaging on some of these things, but any of that 15 would have been down through the attorney general's 16 office. 17 I think I mentioned previously that at least 18 some meetings. Mr. Jamison and Mr. Damich are 19 assigned to state's operations to represent Michigan 20 State Police. I believe Mr. Clark, whatever division 21 he's in, is one of the attorneys representing the 22 Department of Corrections, and he's been on meetings 23 as well. 24 Q. With respect to my question, the Michigan State Police 25 did not communicate directly with the Michigan</p>	<p>Page 94</p> <p>1 Department of Corrections about how the new statute 2 affected probation and parole? 3 MR. DAMICH: Objection. Asked and answered. 4 THE WITNESS: Michigan State Police is 5 responsible for maintaining the registry. To the 6 extent I have, I've told -- now, I'm not saying that 7 the SOR Unit hasn't gotten in contact by others. My 8 guidance to the SOR Unit is, the Michigan Department 9 of Corrections has their own attorneys. If they have 10 questions about what that law means to them and their 11 responsibilities under the act, then they should 12 direct those questions to their attorneys. It is not 13 the responsibility of the MSP SOR Unit to give 14 guidance to other state departments and agencies on 15 interpretations of the act. 16 MS. AUKERMAN: Okay. Let's look at one of 17 the standard operating procedures. Let me share my 18 screen, and this is Exhibit 8, SOR Operating Procedure 19 315, amended August 2nd of 2022. 20 (Plaintiffs' Exhibit No. 8 was marked.) 21 BY MS. AUKERMAN: 22 Q. Are you familiar with this document? 23 A. I'm not. 24 Q. Okay. Who's responsible for writing the SOR operating 25 procedures?</p>

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<p>1 A. This sounds like it's either a division or worksite 2 kind of local procedure. I'm not familiar with this 3 document.</p> <p>4 Q. When you say "division or worksite," what do you mean?</p> <p>5 A. Well, looking at this form, I see three identifiers on 6 it, the Michigan State Police. Then I see the 7 Criminal Justice Information Center, right, and we're 8 talking about CJIC. It is a division within the 9 department of state police. And then within that, is 10 the sex offender registry unit which is a worksite 11 within that division within the department of state 12 police.</p> <p>13 Q. So your understanding is that this --</p> <p>14 A. Is a local worksite policy.</p> <p>15 Q. So this is something that would have been developed 16 within the sex offender registry unit itself?</p> <p>17 A. Correct.</p> <p>18 Q. So let's scroll down to page 10.</p> <p>19 A. And was this adopted? I don't even know. I see it 20 says pending review, so I don't know what this means. 21 I've never seen it, and I'm not in a position to 22 really comment on whether this is something they're 23 following, whether this is the final draft, or whether 24 it's been approved, or whether they're using it. I 25 have no personal knowledge.</p>	<p>1 Q. Okay. It was provided to us in discovery.</p> <p>2 A. Well, it would appear that it's probably a response to 3 a request. All I see is "pending review," so I don't 4 know what that means as to whether or not it is or is 5 not an actual policy of the SOR Unit.</p> <p>6 Q. Okay. So on page 10 here, it states -- it has to do 7 with how you enter committed dates into the system. A 8 committed date is the date the offense was committed.</p> <p>9 It says: 10 "Effective March 2, 2021, per the 11 Michigan Attorney General's Office, if the 12 Committed Date is in a date range and our 13 office is unable to obtain the exact date that 14 is associated with the conviction, use the 15 most recent Committed Date. For example, if 16 the dates are 01/20/2020 through 7/01/2020 and 17 the exact date cannot be obtained, use 18 7/01/2020 as the Committed Offense Date."</p> <p>19 Do you see that?</p> <p>20 A. I see that, yes.</p> <p>21 Q. Okay. Is it your experience that the attorney 22 general's office generally gets involved in the 23 decisions about what gets involved in -- what gets put 24 into the standard operating procedures?</p> <p>25 A. If specific legal questions come up that require</p>
<p>Page 97</p> <p>1 guidance from legal counsel, much like offenders 2 reaching out to their attorneys, we'll reach out to 3 our attorneys. This sounds like it was a specific 4 question that was directed to the attorney general's 5 office, and this reflects the guidance and response to 6 that question.</p> <p>7 Q. So since you're responsible for legal issues, would 8 that pass on through you?</p> <p>9 A. I don't recall. I mean, it may have. The guidance 10 that's reflected here apparently came from the AG's 11 office, though.</p> <p>12 Q. Do you know what the purpose was of using the last 13 date as the committed date?</p> <p>14 MR. DAMICH: Objection --</p> <p>15 THE WITNESS: I don't recall. I don't 16 recall the discussion or the -- I haven't seen this 17 document before. I don't know if there's some other 18 provision in this that qualifies that, whether it's 19 related. I don't understand the context, nor do I 20 understand if it's a pending review. Even though it 21 may have been responsive to a very broad discovery 22 request that says any and all documents remotely 23 related to something, it doesn't mean it is or is not 24 a policy of the SOR Unit. I have no personal 25 knowledge as to whether this is then, now, or was a</p>	<p>Page 98</p> <p>1 policy of the SOR Unit.</p> <p>2 BY MS. AUKERMAN:</p> <p>3 Q. Okay. Let's look at a different one. Do you see 4 this? This is Exhibit 9. This is SOR Operating 5 Procedure 308 having to do with offender duration. 6 (Plaintiffs' Exhibit No. 9 was marked.)</p> <p>7 THE WITNESS: Okay.</p> <p>8 BY MS. AUKERMAN:</p> <p>9 Q. Do you see that? Are you familiar with this document?</p> <p>10 A. No. I don't recall seeing this either.</p> <p>11 Q. Are you familiar with any of the SOR operating 12 procedures?</p> <p>13 A. Generally, yes. I'm not familiar with this document.</p> <p>14 If there's a specific question, I can answer it, but I 15 can't comment on the document.</p> <p>16 Q. Okay. So the two that I've shown you, though, are not 17 SOR operating procedures, are ones you're not familiar 18 with, correct?</p> <p>19 A. Again, they may be SOR operating procedures. I do not 20 recall seeing them. The information in there is 21 likely consistent with information that is my 22 understanding as well, but I can't comment on the form 23 itself.</p> <p>24 Q. So this document relates to how you calculate the 15 25 and 25 years when someone is a Tier I or Tier II so</p>
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<p>1 when they conclude their time on the registry. 2 Do you see that? 3 A. Okay. 4 Q. Okay. What is -- go ahead. 5 A. No, the page I'm looking at says audit for duration 6 ending. So when you say "do you see that," I don't 7 know if that's the page. The document speaks for 8 itself. So whatever you have on the screen is what I 9 can see. If you want me to read the entire thing then 10 keep it up for a period of time, and I can read it 11 but... 12 Q. Okay. Yeah. I don't think that's necessary. I guess 13 I'm interested in knowing what is the -- I didn't see 14 anything in this document about when the clock starts 15 running for the 15 or 25 years. 16 What is the Michigan State Police's position 17 on when the clock starts running? 18 A. I mean, if we're talking about a Michigan offender 19 based on a Michigan conviction, right, that had to 20 occur prior to sentencing under the act itself. So 21 assuming they've timely complied with the legal 22 requirement to do their initial registration, then the 23 clock would seemingly start the day they did their 24 initial registration as required by the statute, 25 whatever that date is.</p>	<p>1 Q. So I mean, this document suggests that time periods of 2 incarceration are deducted, so if somebody is in 3 prison for five years and then they get out, and then 4 they're on the registry for ten years, they wouldn't 5 have completed their 15 years. 6 Is that your understanding? 7 A. Again, it's a specific question I wasn't prepared to 8 answer. Without, you know, diving into the act and 9 the specific facts that are being presented, I'm 10 reluctant to give an opinion. 11 What I will say is this. The Michigan State 12 Police is responsible for maintaining a registry. 13 We're not responsible for determining whether someone 14 has to register. My guidance to the SOR Unit is if 15 we're ever in a position where we're unsure, that, you 16 know, we shouldn't have -- put it this way. Let me 17 say it this way. 18 If the Michigan State Police makes a 19 determination that someone no longer has to register, 20 right, that whatever calculation you want to use, 21 whatever procedure manual you want to use, if the 22 determination is made, hey, this person's time is up, 23 and we take them off the registry, and the person is 24 notified you've been removed from the registry -- 25 like, assuming something along those lines -- that</p>
<p>Page 101</p> <p>1 does not mean that the person no longer has an 2 obligation to register under the act. 3 A local prosecutor who has more information 4 could say no, no, no. This person should have never 5 been a Tier I. It should always have been a Tier II. 6 That local prosecutor has the entire autonomy to 7 notify that offender to say we believe the Michigan 8 State Police was wrong. You still have a continuing 9 obligation to register. We're putting you on notice 10 that you have an obligation to register, and failure 11 to do so is a willful violation of the act. 12 The point being, Michigan State Police 13 doesn't determine whether someone registers. We do 14 our best to comply with the act and maintaining a 15 registry. And at the end of the day, someone could 16 still be prosecuted for a willful violation for not 17 registering, even though there's a point in time where 18 MSP took them off the registry 'cause we thought that 19 was what the statute required us to do. 20 Q. Okay. But the Michigan State Police will -- based on 21 it's understanding of what the duration requirements 22 are, will remove people from the registry after 15 or 23 25 years if the Michigan State Police believes they've 24 completed their duration? 25 A. Yes. That's my understanding.</p>	<p>Page 102</p> <p>1 Q. But sitting here today, you don't know how they 2 calculate that time? 3 A. I think it depends on the specific offender. So to 4 give a broad generalization or characterization 5 because there could be different meanings -- not 6 different meetings but someone may look at a specific 7 offender and maybe they're counting time in a county 8 jail or they're counting time on something that is not 9 within the department of corrections or some other 10 thing, fact, that's unique to a specific offender, 11 that may affect ultimately the calculation that's 12 gonna be used as required under the act. We look at 13 the act. We apply the act to the best of our ability, 14 and we maintain the registry to the best of our 15 ability as required by the legislature. We don't 16 interpret things that are not clearly stated by a 17 court opinion, a court order, the statute, or a 18 formal opinion -- 19 Q. So let's stop there. Let's just actually talk about 20 that question of interpretation. 21 Every statute requires a certain level of 22 interpretation, so let's -- when the Michigan State 23 Police needs to interpret what SORA means, who is 24 responsible for making that decision? 25 A. Generally, that's our initial response -- there's a</p>
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<p>1 fine line between interpretation and application. I 2 would say the initial step is within the SOR Unit. 3 The annals within the SOR Unit have the responsibility 4 of applying SOR as required. And if they are 5 struggling in someway, they would send it up the 6 chain.</p> <p>7 We have a chain of command here in the 8 department, so it would go through the SOR Unit 9 through the SOR manager. If there was still a 10 question, then it would likely come to me or another 11 attorney in my worksite. Right now it's just me. And 12 if I'm unable to give that guidance then, perhaps, I 13 might reach out to representatives at the attorney 14 general's office.</p> <p>15 Q. But there's no regulations that have been promulgated 16 about how the Michigan State Police interprets SORA, 17 correct?</p> <p>18 MR. DAMICH: Objection. Asked and answered.</p> <p>19 THE WITNESS: Again, I'm not aware of what 20 promulgation -- promulgated rule can get into simple 21 application of a statute.</p> <p>22 BY MS. AUKERMAN:</p> <p>23 Q. Okay. So let's take an example, then. This is 24 Exhibit 10. This is a brief filed in the Michigan 25 Supreme Court by the Michigan State Police in a case</p>	<p>1 called In Re MD, again, Exhibit 10. 2 (Plaintiffs' Exhibit No. 10 was marked.)</p> <p>3 BY MS. AUKERMAN:</p> <p>4 Q. Are you familiar with this document?</p> <p>5 A. I may have seen this at some point.</p> <p>6 Q. Okay. Do you know who was involved in preparing this 7 document?</p> <p>8 A. I would assume Mr. Restuccia, Mr. Jamison, Mr. Clark, 9 and others in the solicitor general division as 10 indicated on the cover sheet.</p> <p>11 Q. Okay. So this is a brief that purports to be from the 12 Michigan State Police. Was the Michigan State Police 13 consulted in the preparation of this brief?</p> <p>14 A. Again, we're frequently contacted with SORA-related 15 questions on SORA-related matters. Without going 16 through the body of this, I may have been consulted. 17 I may not have. Like, it's not -- I do better with 18 facts than names, so if I understood who MD was or 19 what the case was, that might help trigger my memory.</p> <p>20 Q. This is a case that has to do with juvenile 21 registration. Does that help?</p> <p>22 A. Again, I deal with lots of questions so without 23 reviewing the brief -- is there a specific question 24 and take me to that page you want to ask me?</p> <p>25 Q. I guess what I'm trying to understand is whether the</p>
<p>Page 105</p> <p>1 attorney general's office is filing these briefs on 2 its own, or whether the Michigan State Police is 3 involved in the deciding how it will as an agency 4 respond to legal questions to the Michigan Supreme 5 Court.</p> <p>6 MR. DAMICH: Objection. Form. Ambiguous. 7 Asked and answered.</p> <p>8 THE WITNESS: If the Michigan State Police 9 is a party to a lawsuit, then those questions, at 10 least as a general matter, would be going through the 11 risk management section and First Lieutenant 12 Brimacombe.</p> <p>13 I think in SOR-related questions in 14 general -- I think those persons on this document at 15 the AG's office who I previously identified and are 16 present here, I think will frequently reach out to me 17 with SOR-related questions to get my perspective, my 18 nearly 30 years experience, bounce things off of me, 19 get an idea.</p> <p>20 My concern in my role with the department is 21 what is the impact potentially of this case on our 22 members. That's all I'm concerned with, is what is 23 the impact on our members, what is the department 24 required to do, and does this impact the department in 25 somewhat. And as we're asked questions, we give our</p>	<p>Page 106</p> <p>1 thoughts. I give my thoughts and opinions and have 2 done that on multiple occasions.</p> <p>3 BY MS. AUKERMAN:</p> <p>4 Q. Okay. So are you aware that around the same time that 5 SORA was amended, the legislature also amended MCL 6 712A.28 Sub 3 which relates to confidentially matters 7 in juvenile court cases?</p> <p>8 A. Yes. This now refreshes my memory for MD, so thank 9 you for taking this case. So, yes, when it says the 10 MSP contends, or, you know, I was involved in 11 discussions regarding the impact of the revisions of 12 the probate code on SOR.</p> <p>13 Q. Okay. And so just to summarize, SORA provides under 14 MCL 28.722 that in order for a juvenile offense to 15 qualify the conviction for the purposes of SORA, a 16 juvenile must have an order of disposition that's open 17 to the general public.</p> <p>18 Is that correct?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. And so this brief that was filed by the MSP in 21 our response to an application for leave, concerns the 22 intersection of the SORA statute and does the amended 23 MRL 712A.28, correct?</p> <p>24 A. I believe so, yes.</p> <p>25 Q. Okay. And so reading that highlighted passage, it</p>

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<p>1 states:</p> <p>2 "The MSP contends that the Probate</p> <p>3 Code's revisions eliminated the need for</p> <p>4 juveniles adjudicated under the Probate Code</p> <p>5 from registering beginning January 1, 2021,</p> <p>6 for cases brought under the Probate Code. But</p> <p>7 the earlier offenders remain subject to SORA,</p> <p>8 as do all juveniles convicted as adults."</p> <p>9 Correct?</p> <p>10 A. That's what it says, yes.</p> <p>11 Q. Is that the MSP's official position regarding whether</p> <p>12 in which juveniles remain subject to sex offender</p> <p>13 registration after passage of MCL 712A.28, Sub 3?</p> <p>14 A. I don't know whether it's an official position. I</p> <p>15 think -- as noted below, I think it's a plain reading</p> <p>16 of the statute. If the legislature intended all</p> <p>17 juveniles, you know, to eliminate a requirement for</p> <p>18 any and all juveniles to register, period, it could</p> <p>19 clearly have done that as it did for other specific</p> <p>20 categories of offenders.</p> <p>21 By talking about registering beginning a</p> <p>22 certain date, my understanding of the plain meaning is</p> <p>23 that recognizes distinction of meaning for that date</p> <p>24 as it relates to juvenile offenders. And depending on</p> <p>25 the offense and the adjudication and the date, we have</p>	<p>1 to follow the statute as the legislature gives it to</p> <p>2 us. And if it's clear, then it's clear.</p> <p>3 Q. Okay. So, obviously, the question of what this</p> <p>4 intersection means is up at the Michigan Supreme</p> <p>5 Court, so there's some dispute about what it means.</p> <p>6 But the MSP agrees that juveniles who are</p> <p>7 adjudicated after January 1st, 2021, are not subject</p> <p>8 to registration, correct?</p> <p>9 A. Again, without having the statute right in front of</p> <p>10 me -- 'cause I don't know that I reviewed this as a</p> <p>11 final, but I have no reason to disagree with this, but</p> <p>12 as long as it's consistent with the statute. The</p> <p>13 distinction between adjudicated and the offense date</p> <p>14 'cause I think you can have an issue where someone</p> <p>15 might have had an adjudication before January 1st of</p> <p>16 2021, but a disposition after January 1st of 2021.</p> <p>17 And when you talk about the, you know, pending issues</p> <p>18 before the courts, there could be a -- I'm assuming</p> <p>19 the argument is being made that, well, the disposition</p> <p>20 occurred after, and now the record is not public, so</p> <p>21 therefore, this person doesn't have to register. I</p> <p>22 suppose that's ultimately something for the court to</p> <p>23 determine. But as written, those who have done</p> <p>24 juvenile work, know there's a distinction between</p> <p>25 adjudication and the disposition.</p>
<p>Page 109</p> <p>1 Q. Okay. I don't want to get into the weeds on this.</p> <p>2 What I'm trying to get at is -- what I'm trying to get at</p> <p>3 is for people who were adjudicated after January 1,</p> <p>4 2021, according to what the Michigan State Police has</p> <p>5 represented to the Michigan Supreme Court, it's the</p> <p>6 MSP's position that those individuals are not subject</p> <p>7 to registration, correct?</p> <p>8 A. Well, again, I don't know that "position" is the</p> <p>9 correct word. That is an accurate representation. I</p> <p>10 believe the AG's office has summarized our consensus</p> <p>11 of an understanding of the plain reading of the</p> <p>12 statute.</p> <p>13 But as I've said before, if you're talking</p> <p>14 about a juvenile, whether it's an adult conviction or</p> <p>15 juvenile adjudication, the obligation to register or</p> <p>16 not register has to be resolved by the trial court.</p> <p>17 MSP has nothing to do with that determination, so we</p> <p>18 don't need to have a position.</p> <p>19 Q. Okay. But the MSP has filed a brief setting out its</p> <p>20 understanding of the statute, correct?</p> <p>21 A. Well, again, as an amicus brief, since we're</p> <p>22 responsible for maintaining the registry, to the</p> <p>23 extent the court authorizes us to file amicus and</p> <p>24 offered an opinion that may or may not be helpful to</p> <p>25 them, we provided that, what we think is the plain</p>	<p>Page 110</p> <p>1 language of the statute means.</p> <p>2 Q. So who's involved in making the decision about how to</p> <p>3 interpret the intersection of those two statutes for</p> <p>4 the MSP?</p> <p>5 A. Again, for any case that comes up, that comes across</p> <p>6 the radar, if the AG's office reaches out to us and we</p> <p>7 have privileged attorney-client communications as to</p> <p>8 what, you know, the impact this case could have on the</p> <p>9 department or department members, and a decision gets</p> <p>10 made internally as to whether amicus should or should</p> <p>11 not be filed on behalf of the department to protect</p> <p>12 the -- regarding statute, once that decision is made,</p> <p>13 as it was here, then it's conveying our understanding</p> <p>14 of the plain reading of the statute.</p> <p>15 Q. Okay. Did the Michigan State Police undertake any</p> <p>16 steps to identify juveniles who are subject to</p> <p>17 registration and who are adjudicated after January 1</p> <p>18 of 2021?</p> <p>19 A. I know that you had just sent an email, I think,</p> <p>20 yesterday that was questioning specific juvenile</p> <p>21 offenders, and I think you identified 20 that you had</p> <p>22 concern with, where they're at on the registry. I can</p> <p>23 tell you that that was immediately forwarded to me.</p> <p>24 And then I immediately forwarded it to the SOR Unit to</p> <p>25 begin an analysis and hoping to, through our</p>
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<p>1 attorneys, get that response back to you shortly. But 2 it's going to -- 3 Q. But prior to that letter, there had not been an effort 4 by the MSP to identify individual juveniles who were 5 adjudicated after January 1, 2021? 6 MR. DAMICH: Objection. Foundation. 7 THE WITNESS: I don't know that that's 8 accurate. The issue historically has been with the 9 registry. And it was one of the issues that was with 10 OffenderWatch that you're well aware of through your 11 cases is, you know, pulling out certain information. 12 For example, for years they never captured 13 the offense date which we know through the litigation 14 and under the new act that it has meaning as to when 15 the offense occurred, especially from the ex post 16 facto side -- 17 BY MS. AUKERMAN: 18 Q. That's not my question, Mr. Beatty. Let's move on. 19 Okay. So let's talk about reporting 20 requirements. Under SOR, registrants have to report 21 certain information, correct? 22 A. Yes. 23 Q. And has the MSP promulgated official rules or guidance 24 about what information must be reported? 25 MR. DAMICH: Objection. Asked and answered.</p>	<p>1 THE WITNESS: Any question you've asked and 2 will ask regarding promulgation of rules related to 3 SOR, I'll tell you that the Michigan State Police has 4 never promulgated rules in relation to SOR, so if you 5 want to just take that as a standing answer regarding 6 SOR 'cause it's about the fourth time you've asked it. 7 We've never promulgated rules regarding SOR. 8 BY MS. AUKERMAN: 9 Q. Okay. So in terms of information that's provided to 10 registrants, what information is provided? 11 A. What do you mean? 12 Q. Information to registrants about what their 13 obligations and what their reporting and verification 14 obligations are. 15 So we've looked at the explanation of 16 duties. We've looked at the March 24 (sic) letter. 17 Is there anything that has been provided to 18 registrants about what their reporting obligations 19 are? 20 MR. DAMICH: Objection. Ambiguous. 21 THE WITNESS: Yeah, again, I think you're 22 putting Michigan State Police in the wrong step of the 23 process. For a Michigan State Police -- 24 BY MS. AUKERMAN: 25 Q. I'm not asking you -- I'm asking you to answer the</p>
<p>Page 113</p> <p>1 question, Mr. Beatty. Has a Michigan State Police -- 2 I realize you don't think it's Michigan State Police's 3 responsibility. 4 My question is has the Michigan State Police 5 provided any information to registrants other than the 6 Explanation of Duties and the March 2021 letter 7 regarding their reporting obligations? 8 A. Generally, as to offenders, I'm not aware of another 9 document. As to specific offenders and specific 10 issues that may come up with specific offenders, there 11 may be communications to individual offenders. 12 Q. Okay. Thank you. All right. Let's go back and look 13 at the Explanation of Duties form. This is, again, 14 Exhibit 5. 15 Does this form list all of the information 16 that the Michigan State Police believes must be 17 reported? 18 A. As of March 2022, yes. That represents what we 19 believe were statutorily required to provide to 20 offenders. 21 Q. Okay. So let's look at paragraph 4. I just want to 22 understand a little more about how the MSP is 23 interpreting the statute. So paragraph 4, Subsection 24 F says -- relates to information that must be 25 initially reported and verified at regular</p>	<p>Page 114</p> <p>1 verification dates, correct? 2 A. "Upon registering as a sex offender, I am required by 3 law to provide the following information." So, yes, 4 in response to that, that's what they're required to 5 report according to -- 6 Q. Right. And then 5 talks about having to review that 7 information during verification period, correct? 8 A. Correct. 9 Q. So we talked earlier a little bit about volunteering. 10 If you look under 4.f., is there any mention 11 of volunteering there? 12 A. I don't see the word volunteering. 13 Q. Okay. So let's move down to section -- paragraph 6. 14 Paragraph 6 relates to information that must be 15 updated within three business days, correct? 16 A. Correct. 17 Q. Okay. And 6.b. says that employment, including 18 volunteer work, must be reported in person within 19 three days, correct? 20 A. That's what is says, yes. 21 Q. Okay. So is it MSP's position that SORA doesn't 22 require reporting or verification -- initial reporting 23 or verification of volunteer work, but it requires 24 reporting of stopping or starting volunteer work 25 within three business days?</p>

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<p>1 MR. DAMICH: Objection. Ambiguous. 2 Compound. Confusing. 3 THE WITNESS: Yeah, without having the Act, 4 what I would do right now, if someone brought this 5 apparent inconsistency -- and I don't know whether it 6 is or not -- but the statutory sets are decided. 7 I would go and look for every use of the 8 word volunteer in SOR. And if this question came to 9 me, which it hasn't previously that I'm aware, either 10 volunteer would be added above it. It's something to 11 be required to be reported initially. If it's 12 something that later came to the statute and just 13 didn't make its way into that section of the form or 14 not, or adjusted accordingly. So that's what the form 15 is. That's what it says. I don't know if that form 16 has been subsequently revised. I don't know if 17 that's -- without doing analysis of the statute, 18 either they use the word volunteer or not. 19 BY MS. AUKERMAN: 20 Q. Do you know if the statute -- if the MSP believes the 21 statute requires reporting of volunteer information? 22 MR. DAMICH: Objection. Foundation. 23 THE WITNESS: Yeah, I don't -- I didn't 24 research the volunteer issue before coming in here, so 25 whatever the statute says regarding volunteer or</p>	<p>1 doesn't say regarding volunteer, or a case that has 2 interpreted it, or an attorney general opinion that as 3 a formal opinion, the attorney general has interpreted 4 it. As I said, I'm not in a position to get into a 5 decision on the use of the word volunteer in a form 6 without getting into the weeds a little bit. 7 BY MS. AUKERMAN: 8 Q. How would a registrant know whether they have to 9 report volunteer work? 10 MR. DAMICH: Objection. Foundation. 11 THE WITNESS: Well, if they're going just by 12 the form, they would say, well, I didn't have to 13 report it when I did my initial report, but 14 apparently, I have to do it when I do it later on. 15 And then the attorney would look at it or the 16 prosecutor and say, well, are we going to pursue a 17 violation for either reporting or not reporting in a 18 timely fashion volunteer. If they believe if there's 19 a willful violation, then they can move forward. 20 The defendant's position would be, hey, this 21 is unclear. I didn't understand. How is it not 22 willful? And it's likely the case wouldn't have gone 23 anywhere. How were they supposed to do it? I guess 24 go in the form. If the form is confusing, check with 25 your attorney, because the registration obligation,</p>
<p>Page 117</p> <p>1 like I said, occurs prior to sentencing before it ever 2 gets to the Michigan State Police. 3 BY MS. AUKERMAN: 4 Q. But somewhere along the lines, somebody at the MSP 5 decided something about volunteering has to be 6 reported because volunteering is mentioned on the 7 explanation of duties, correct? 8 MR. DAMICH: Objection -- 9 THE WITNESS: I'm assuming so, yes. 10 BY MS. AUKERMAN: 11 Q. Okay. So let's go look at -- this is MCL 28.725, 12 Exhibit 2. If we look at Section 1.b., this is the 13 reporting around employment. It says, the 14 individual -- reporting if the individual changes his 15 or her place of employment or employment is 16 discontinued. 17 There's nothing about volunteering there. 18 Is there? 19 A. I don't see it. 20 Q. Do you know what the basis is why the MSP requires 21 certain volunteer work to be reported? 22 A. As I said earlier -- 23 MR. DAMICH: Objection. Lack of foundation. 24 BY MS. AUKERMAN: 25 Q. Does the MSP have a definition of what constitutes</p>	<p>Page 118</p> <p>1 volunteer work? 2 A. I'm not aware of one. 3 Q. Okay. If a registrant shoveled an elderly neighbor's 4 driveway for free, does a registrant have to report 5 that within three days? 6 MR. DAMICH: Objection. Speculation. 7 THE WITNESS: Yeah, I don't know. 8 BY MS. AUKERMAN: 9 Q. What if a registrant mows the elderly neighbor's lawn 10 every week all summer, is that something they would 11 have to report? 12 MR. DAMICH: Objection. Speculation. 13 THE WITNESS: Again, it's -- if you're 14 asking me from an enforcement standpoint, I would have 15 to look at the facts. I would have to look at the 16 offender, and then I'd offer opinions as to whether I 17 fit. Just, you know -- 18 BY MS. AUKERMAN: 19 Q. I'm asking you whether that is under -- whether the 20 MSP -- I'm asking you whether that is something that 21 would be reportable under the statute. 22 A. Again, without, you know, on-the-fly offering an 23 opinion, I'm not prepared to offer an opinion on that 24 without getting into the weeds. I wasn't -- that's 25 not a question I was prepared to answer.</p>

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<p>1 Q. Okay. So if a friend is having trouble during taxes 2 and a registrant who has a background in accounting 3 volunteers to help that person do their taxes, is that 4 something they have to report as volunteer work?</p> <p>5 A. Same answer.</p> <p>6 Q. Okay. And you're not aware of any information 7 available to registrants about what kind of 8 volunteering is reportable, correct?</p> <p>9 MR. DAMICH: Objection. Asked and answered.</p> <p>10 THE WITNESS: Yeah, same answer.</p> <p>11 BY MS. AUKERMAN:</p> <p>12 Q. Okay. Let's talk about paid employment. Going back 13 to Exhibit 2, here it says that the person has to 14 report. This is Section (1)(b). "The individual 15 changes his or her place of employment, or employment 16 is discontinued."</p> <p>17 If a registrant's worksite changes from day 18 to day, does he have to report the new site?</p> <p>19 MR. DAMICH: Objection. Calls for 20 speculation.</p> <p>21 THE WITNESS: To me, there's nothing 22 ambiguous about having to report a change of 23 employment. If that employment changes day to day -- 24 I didn't write the statute. If the statute requires 25 to report changes to employment and that employment</p>	<p>1 day to day, then -- you know, if it's changing in less 2 than three business days, I'm not sure how it would 3 ever happen because -- but if it's employment 4 that's -- if the statute says you have to report 5 changes in employment, then you have to report changes 6 in employment. And I guess it doesn't even matter 7 whether it's within three business days.</p> <p>8 BY MS. AUKERMAN:</p> <p>9 Q. So let's say somebody worked as a floater for Walmart, 10 and on Monday, they get sent to 28th Street. On 11 Tuesday, they get sent to Main Street. On Thursday, 12 they get sent to Elm Street.</p> <p>13 Do they have to report each of those changes 14 to their place of employment?</p> <p>15 MR. DAMICH: Objection. Calls for 16 speculation.</p> <p>17 THE WITNESS: There's nothing ambiguous 18 about that.</p> <p>19 BY MS. AUKERMAN:</p> <p>20 Q. So your answer is yes, they have to report that?</p> <p>21 A. Again, I don't make decisions of whether people have 22 to report. It's their obligation to comply with the 23 act. The statute says they have to report a change of 24 employment, and if that is a change of employment, 25 then that is required to be reported within three day.</p>
<p>Page 121</p> <p>1 Q. Okay. If a person --</p> <p>2 A. I mean, I recall the previous litigation, it talks 3 about the regularly used and the -- you know, whatever 4 the other reporting requirements that were in there 5 that then were challenged on how constitutional 6 grounds were being vague. And I believe you prevailed 7 in those one or two or one of them on to vagueness. 8 That routinely or regularly used, my understanding was 9 insisted in the 2011 that it be added by --</p> <p>10 Q. Yes, okay.</p> <p>11 A. -- because it wasn't clear. The same argument you're 12 making here. This is clear. It's not ambiguous. You 13 say it might be, but it's clear.</p> <p>14 Q. Okay. And if a person is temporarily laid off for a 15 few weeks, would the person need to report that?</p> <p>16 A. Well, layoff, I think, is a term of art, and a layoff 17 doesn't mean fired or terminated. People could be 18 laid off, seasonal workers are laid off every year, 19 but they always have a job when it comes back in the 20 spring.</p> <p>21 Q. Does that count as employment that is discontinued 22 which is --</p> <p>23 A. I don't know that employment is discontinued or not. 24 I don't think it's ever gonna be -- it's an issue with 25 SOR of someone who has had a layoff status for a</p>	<p>Page 122</p> <p>1 period of time but is going to be going back to 2 employment. That's probably far less important in the 3 big scheme of things as not reporting and a new 4 employment you didn't previously report.</p> <p>5 Q. That's not my question. My question is, is a layoff a 6 discontinuation of employment?</p> <p>7 A. You'd have to ask the legislature or a court for that 8 answer.</p> <p>9 Q. Okay. Thank you.</p> <p>10 Let's move on to -- let's go back to 11 Exhibit 5. This is, again, the Explanation of Duties. 12 Looking at paragraph 4.j. here, this relates to 13 reporting "of any vehicle that I own or operate," 14 correct?</p> <p>15 A. Correct.</p> <p>16 Q. The form here uses the present tense, correct?</p> <p>17 A. Yes.</p> <p>18 Q. And let's go back to the statute. It's, again, 19 Exhibit 2, MCL 28.725, Subsection 2, discusses 20 reporting of vehicles that are registered or used by. 21 So we've got the past tense there, correct?</p> <p>22 A. Correct.</p> <p>23 Q. So is it the MSP's position that you don't have to 24 report vehicles that were owned or operated in the 25 past?</p>

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<p>1 A. I don't believe -- the statute says registered to or 2 used by the individual, so when you're doing the 3 Explanation of Duties form, it's advising them of the 4 requirements that moving forward you have to identify 5 these things moving forward. As you move forward, 6 then it's encompassing everything that you're use-- 7 every vehicle that you're using. So to me, it's not 8 vague. If you're using a vehicle under SOR, once you 9 do your explanation of duties, you have an obligation 10 to notify.</p> <p>11 Q. So the MSP's interpretation of the statute is that it 12 only applies to current and future uses of these items 13 not past -- a vehicle that one had registered or was 14 used by the individual in the past?</p> <p>15 MR. DAMICH: Objection. Form.</p> <p>16 THE WITNESS: Let me read the section here. 17 Hold on one second here. So reading it in its 18 entirety, it says: 19 "An individual required to be registered 20 under this act who is a resident of this state 21 shall report in the manner prescribed by the 22 department..."</p> <p>23 Which is the forms that we've already talked about. 24 "...to the registering authority having 25 jurisdiction where his or her residence or</p>	<p>1 domicile is located...". 2 So that would be the local police, sheriff's 3 department, or post where their residence or domicile 4 is located. 5 "...not more than 3 business days after 6 any of the following occur: 7 So giving the present tense or past tense, this may be 8 where the confusion lies because if it's accounting 9 for the fact that you can come in after three days 10 after you do something, then obviously, it's going to 11 be talking about what you've used in the previous 12 three days. 13 The reporting obligation as depicted on the 14 manner prescribed by the department of the form says 15 if you're going to use a vehicle, you have to report 16 within three days. So I think present, past, all this 17 other stuff that we're characterizing it -- I think 18 that's where you get into past or present tense. 19 You signed a reporting obligation. You 20 know, I don't think the intent is you have to go back 21 and find your -- you know, in 1976, you know, 40 years 22 before you're convicted, you once drove an AMC Pacer, 23 that's not what it's looking for. But when you sign 24 your registry and authority verification form, you 25 have to report your vehicles, and you have to do it</p>
<p>Page 125</p> <p>1 within three days. 2 When the statute says "used," it's talking 3 about what may predate the date that you're going in 4 to doing your reporting which is necessarily the past 5 tense. But to me, it's not ambiguous. It may be 6 burdensome, but that's the choice of the legislature. 7 It's not ambiguous. 8 Q. Okay. Let's look back at the explanation of this. So 9 this is 4.j. Do you see that? 10 A. I do. 11 Q. Okay. So if I -- if the registrant serves as a 12 designated driver and operates a friend's car to drive 13 that person home after that person has had too much to 14 drink, does the registrant have to report the vehicle? 15 MR. DAMICH: Objection. Speculation. 16 THE WITNESS: If it's a vehicle they 17 operate, under the plain lines of the statute, it's 18 not ambiguous. They have to report that. 19 BY MS. AUKERMAN: 20 Q. If they rent a car, do they have to report that within 21 three business days? 22 MR. DAMICH: Objection. 23 THE WITNESS: As used in the statute, it is 24 not ambiguous. They're required to report any vehicle 25 they operate.</p>	<p>Page 126</p> <p>1 BY MS. AUKERMAN: 2 Q. Is that if they run a Zipcar for a 15-minute errand, 3 they would have to report that, correct? 4 MR. DAMICH: Objection. Form. 5 THE WITNESS: As used in the statute, it's 6 not ambiguous. They have to report any vehicle they 7 operate. 8 BY MS. AUKERMAN: 9 Q. If they work construction and they operate a backhoe, 10 do they have to report that? 11 MR. DAMICH: Objection. 12 THE WITNESS: As used in the statute, it's 13 not ambiguous. They have to report any vehicle they 14 operate. 15 BY MS. AUKERMAN: 16 Q. Okay. The Explanation of Duties says that they have 17 to report all electronic mail, addresses, and internet 18 identifiers registered by me or used by me. 19 What internet and electronic identifiers 20 have to be reported? 21 A. I think internet identifiers is a term of art. I 22 don't have that definition in front of me, but the IP 23 address. I'm not a computer person. But I have to 24 understand that in the absence of the legislature 25 defining this, I'd have to go to the definition</p>
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<p>1 section to see if that term is specifically defined. 2 If not, I would go to a common dictionary to 3 understand what that definition is, and then that 4 would be a fair interpretation of what the person is 5 expected to report under the act. 6 Q. So the definition is here a little further down. I 7 didn't highlight it. Internet identifiers means all 8 definitions used for self-identification or routing 9 internet communications or postings. 10 Do you see that? 11 A. I do. 12 Q. Okay. So based on their definition, would you have to 13 report an IP address? 14 A. Again, if that meets the definition of -- if what 15 you're describing as an IP address, it is a 16 designation used for self-identification or routing 17 internet communications or postings, then I would say 18 yes. 19 Q. Do you know sitting here today whether it does meet 20 that definition? 21 A. I'm not a computer person, so I'm not comfortable with 22 what an IP address is. But are we talking about -- 23 not in the context of SOR, but is that where you say, 24 well, there's an investigation or something going on, 25 or civil discovery, and you go back to sort where this</p>	<p>1 email came from, right, or what router or service it 2 came through. And if that's an IP address, that 3 router by definition is routing that communication. 4 Again, it's not -- you know, if it fits within that 5 definition, then the legislature says it should be 6 reported. Whether or not it's a willful violation for 7 not reporting a specific IP address, that's going to 8 be up for a prosecutor to decide. 9 Q. If you create an Amazon account, does that need to be 10 reported? 11 MR. DAMICH: Objection. Speculation. 12 THE WITNESS: I don't know whether it meets 13 the definition of an IP address. If it does, then 14 again, according to statute, it would have to be 15 reported. Whether it's a willful violation is the 16 decision of the prosecutor to decide. 17 BY MS. AUKERMAN: 18 Q. If you create a temporary identifier to join a Zoom 19 meeting, do you have to report that? 20 MR. DAMICH: Objection. Speculation. 21 THE WITNESS: If it meets the definition of 22 an internet identifier as the legislature requires it. 23 BY MS. AUKERMAN: 24 Q. But you don't know whether it meets that definition or 25 not?</p>
<p>Page 129</p> <p>1 A. No one has asked me to do an analysis of a specific 2 offender, a specific IP address, and what it means in 3 a specific occasion. And even if I did that analysis, 4 whether it constitutes a willful violation for not 5 reporting an Amazon account, I would be very 6 disappointed if a prosecutor, where the sole violation 7 is not reporting an Amazon account, an IP address as a 8 way to provide -- 9 Q. Okay. Right. I understand that you think prosecutors 10 may or not prosecute these. That's not my question. 11 My question is whether these things are a violation. 12 Let's talk about addresses. If a person 13 spends a couple of nights at his partner's house, how 14 many nights can he spent there before he has to report 15 that address? 16 A. I don't have the statute in front of me, whatever the 17 statute requires to be reported. 18 Q. Who qualifies the registrant as homeless? 19 MR. DAMICH: Objection. Foundation. 20 THE WITNESS: Is it -- I believe "homeless" 21 is defined in the statute. Is it not? 22 BY MS. AUKERMAN: 23 Q. You don't know sitting here? 24 A. I don't have the statute open in front of me. I 25 review lots of things. Your world may be consumed</p>	<p>Page 130</p> <p>1 with SOR for several years. Mine goes in many 2 different areas. 3 Q. People have to report their telephone numbers, 4 correct? 5 A. Yes. I believe so. 6 Q. Okay. So let's look again here, and the Explanation 7 of Duties says, "...telephone numbers registered to me 8 or used by me..." 9 If someone is calling his dad and he uses a 10 friend's cell phone to make a call, does he have to 11 report that phone? 12 MR. DAMICH: Objection. Speculation. 13 THE WITNESS: If it's a telephone number 14 registered to them or used by them, under the act, it 15 has to be reported. Whether or not it constitutes a 16 willful violation is a different question. 17 BY MS. AUKERMAN: 18 Q. If he makes a business call one time from a landline 19 at work that isn't assigned to him, does he have to 20 report that? 21 MR. DAMICH: Objection. Speculation. 22 THE WITNESS: As written in the statute, 23 it's not ambiguous. If it's a telephone number used 24 by them including but not limited to residential, 25 work, or mobile telephone numbers, it must be reported</p>

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<p>1 according to the legislature.</p> <p>2 BY MS. AUKERMAN:</p> <p>3 Q. With education, if a person takes a class at a local</p> <p>4 community college, say, you know, tae kwon do, do they</p> <p>5 have to report that?</p> <p>6 MR. DAMICH: Objection.</p> <p>7 THE WITNESS: Without -- I'd have to look at</p> <p>8 the statute to see definitions of education, timing,</p> <p>9 duration, any of those types of things.</p> <p>10 BY MS. AUKERMAN:</p> <p>11 Q. Okay. So it indicates on the Explanation of Duties --</p> <p>12 let's see. The name and add- -- this is 4.g. "The</p> <p>13 name and address of any school that I attend or that</p> <p>14 has accepted me if I plan to attend."</p> <p>15 Based on that language, does a person have</p> <p>16 to report their tae kwon do class?</p> <p>17 MR. DAMICH: Objection.</p> <p>18 THE WITNESS: Again, it depends. I suppose</p> <p>19 it depends on where this class is attending and</p> <p>20 whether or not it's a school.</p> <p>21 When I was in college, I took their physical</p> <p>22 education classes I took that were, you know, throw</p> <p>23 off, kind of easy classes, but I took it at Wittenberg</p> <p>24 University. I'd have to report that I'm taking that</p> <p>25 class.</p>	<p>1 If someone uses a school building and offers</p> <p>2 a class as a community education type of thing, then</p> <p>3 is that a school, or is that just simply a class being</p> <p>4 housed in a school? Much like if you vote at a</p> <p>5 school, is that a voting place when it's going on, or</p> <p>6 is that a school while it's going on. It depends on</p> <p>7 the specific facts and circumstances.</p> <p>8 If it's a school that they are attending,</p> <p>9 then under the plain language of the act, they would</p> <p>10 have to report it. If it's a school that's accepted</p> <p>11 them and they plan on attending, then under the</p> <p>12 plain language of the act, it's not ambiguous. They</p> <p>13 would have to report it. Whether it constitutes a</p> <p>14 willful violation would depend on the specific facts</p> <p>15 and circumstances.</p> <p>16 BY MS. AUKERMAN:</p> <p>17 Q. But a tae kwon do class that's operated by a community</p> <p>18 non-profit and that's held in a school, do they have</p> <p>19 to report that?</p> <p>20 MR. DAMICH: Objection. Speculation. Asked</p> <p>21 and answered.</p> <p>22 THE WITNESS: Yeah, I don't -- I don't know</p> <p>23 the answer to that. It probably would depend on the</p> <p>24 facts.</p> <p>25 As far as your members, the Michigan State</p>
<p>Page 133</p> <p>1 Police, as with any SOR violation, they are directed</p> <p>2 to not take any direct enforcement action, and if</p> <p>3 anyone thought that that was a potential violation,</p> <p>4 they would be directed to reach out to the local</p> <p>5 prosecutor to make a decision.</p> <p>6 BY MS. AUKERMAN:</p> <p>7 Q. Okay. Let's move on. Let's talk about out-of-state</p> <p>8 offenses.</p> <p>9 Do you have responsibilities when someone</p> <p>10 comes to Michigan and has an out-of-state conviction?</p> <p>11 A. I might.</p> <p>12 Q. When would you have those responsibilities?</p> <p>13 A. Well, as mentioned previously, questions would come</p> <p>14 into the SOR unit. They're responsible for applying</p> <p>15 the act to the best of their abilities. If the</p> <p>16 analyst is unable to resolve that, then it goes up the</p> <p>17 chain of command.</p> <p>18 If no one there is able to resolve the</p> <p>19 question that needs to be asked, it would come to me</p> <p>20 or if there's another attorney. As I mentioned,</p> <p>21 Mr. Gemellaro in the past, but primarily me. I do my</p> <p>22 best to answer it. And for those, I don't recall many</p> <p>23 occasions where something had bounced off the AG's</p> <p>24 office, but if necessary, would do that depending on a</p> <p>25 specific question or a case.</p>	<p>Page 134</p> <p>1 Q. So if the analyst resolves it, it wouldn't come up to</p> <p>2 you?</p> <p>3 A. Not necessarily, unless they had a concern. But if</p> <p>4 it's a question regarding a specific offense, from a</p> <p>5 specific offense, where it's factually similar to a</p> <p>6 question that I previously provided guidance on or</p> <p>7 which they previously received guidance on, I wouldn't</p> <p>8 expect them to come to me each time to ask the same</p> <p>9 question over and over.</p> <p>10 Q. So you don't see every single case of every single</p> <p>11 out-of-state person who comes in, correct?</p> <p>12 A. No. I don't see every case.</p> <p>13 Q. Okay. So as I understand it, SOR requires people with</p> <p>14 offenses from other jurisdictions to register as sex</p> <p>15 offenders in Michigan under one of two circumstance.</p> <p>16 First, is if the offense is substantially</p> <p>17 similar to a Michigan registrable offense. Is that</p> <p>18 correct?</p> <p>19 A. Yes.</p> <p>20 Q. And then second, is if the individual from another</p> <p>21 state is required to register -- the language of the</p> <p>22 statute -- this is MCL 28.723(1)(d) -- is if the</p> <p>23 "individual from another state who is required to</p> <p>24 register or otherwise be identified as a sex or child</p> <p>25 offender or predator under a comparable statute of</p>
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<p>1 that state." Correct?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Can you tell me, roughly, how many people with</p> <p>4 out-of-state convictions are added to Michigan's</p> <p>5 registry every month?</p> <p>6 A. No.</p> <p>7 Q. Can you explain how Michigan State Police determines</p> <p>8 the registration requirements for out-of-state</p> <p>9 registrants?</p> <p>10 A. Each case is looked at on an individual basis, so</p> <p>11 without looking at a specific offender and the facts</p> <p>12 surrounding that offender -- but, generally, you</p> <p>13 correctly cited that there's two -- it's not one of</p> <p>14 two. There's two separate and independent basis to</p> <p>15 require registration. You could be required to</p> <p>16 register under one or the other or both.</p> <p>17 And as a general matter, you know, whether</p> <p>18 it comes in and it's both, then whatever would have</p> <p>19 the, I suppose, longer reporting obligation would be</p> <p>20 what the person's typically required to register.</p> <p>21 Q. So if they're required to do both, if the registration</p> <p>22 obligation in Michigan is longer, that's the</p> <p>23 registration obligation that would apply, correct?</p> <p>24 A. Generally speaking, that's my understanding, yes.</p> <p>25 Q. And if the registration obligation in Michigan is</p>	<p>1 less, then the out-of-state's longer registration</p> <p>2 obligation would apply?</p> <p>3 A. Yes. In order to give full faith and credit to the</p> <p>4 other state's laws and to not make Michigan a</p> <p>5 destination for offenders to come here and seek</p> <p>6 sanctuary.</p> <p>7 Q. Okay. So let's look at -- this is -- mark this as</p> <p>8 Exhibit 12. This is a flowchart regarding</p> <p>9 registration of people with out-of-state offenses.</p> <p>10 (Plaintiffs' Exhibit No. 12 was marked.)</p> <p>11 BY MS. AUKERMAN:</p> <p>12 Q. Do you recognize this document?</p> <p>13 A. I do.</p> <p>14 Q. Okay. And there are actually two flowcharts, one for</p> <p>15 adults and one for juveniles, correct?</p> <p>16 A. Yes.</p> <p>17 Q. Do you know who created these flowcharts?</p> <p>18 A. I believe this might have been Mr. Gemellaro. I did</p> <p>19 not. I don't believe I created this document.</p> <p>20 Q. So this was -- and he was also in the legal</p> <p>21 department?</p> <p>22 A. He was. He's no longer with the department. He's in</p> <p>23 the private sector.</p> <p>24 Q. Okay. But these were approved by someone in the legal</p> <p>25 department, correct?</p>
<p>Page 137</p> <p>1 A. Yes. As an internal working document, yes.</p> <p>2 Q. And the defendants say in their Answer that these</p> <p>3 flowcharts assist the MSP SOR Unit staff in</p> <p>4 determining registration obligations under Michigan</p> <p>5 law. Is that accurate?</p> <p>6 A. Yes. I believe so.</p> <p>7 Q. Okay. And do these flowcharts accurately set out the</p> <p>8 steps that the Michigan State Police takes in</p> <p>9 analyzing whether a person with a non-Michigan</p> <p>10 conviction must register?</p> <p>11 A. This is guidance that was given by Mr. Gemellaro. I</p> <p>12 have no reason to doubt it. I've seen it, but I</p> <p>13 haven't gone through it into the weeds, so to speak,</p> <p>14 using your term. But to the extent that he provided</p> <p>15 guidance to the SOR Unit, I would expect that they're</p> <p>16 following the guidance that he gave.</p> <p>17 Q. Do you use these flowcharts yourself?</p> <p>18 A. Me, no.</p> <p>19 Q. Do you know who uses them?</p> <p>20 A. I would assume it's available. Whether they're used</p> <p>21 or not, it's available to the SOR Unit staff.</p> <p>22 Q. Okay. So let's walk through the flowchart for adults.</p> <p>23 It looks like the first step is to determine whether</p> <p>24 there's a comparable Michigan adult conviction,</p> <p>25 correct?</p>	<p>Page 138</p> <p>1 A. Correct.</p> <p>2 Q. And is that the same thing as saying that the offense</p> <p>3 is substantially similar to a Michigan registrable</p> <p>4 offense as defined in MCL 28.722?</p> <p>5 A. Yes. We're seeing what fits within the category of</p> <p>6 listed offenses and whether the offense from the other</p> <p>7 state is substantially similar.</p> <p>8 Q. Okay. And that also requires a determination of the</p> <p>9 conviction is like an adult conviction, so like it's</p> <p>10 not a juvenile adjudication or a parole program or</p> <p>11 something like that?</p> <p>12 A. Yeah. I'm assuming that was made because of different</p> <p>13 issues with respect to juveniles, so creating two</p> <p>14 separate flowcharts.</p> <p>15 Q. So at the initial step, you have to make a</p> <p>16 determination that -- so we're looking at the first</p> <p>17 green box here. You have to make a determination that</p> <p>18 the offense is substantially similar to a Michigan</p> <p>19 registrable offense, and that the conviction type is</p> <p>20 comparable to a Michigan adult conviction, correct?</p> <p>21 A. Correct.</p> <p>22 Q. And if the offense is not comparable to a Michigan</p> <p>23 offense, the person still has to register if the</p> <p>24 convicting state requires registration, correct?</p> <p>25 A. I don't like to use the word "comparable" 'cause</p>

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<p>1 that's not what the statute uses. I think they say 2 "substantially similar."</p> <p>3 But understanding your question, if it's not 4 substantially similar to a Michigan listed offense, 5 and there's no obl-- then that requirement to 6 register under Sub 1 that you previously went through 7 doesn't exist. Then you're down to one possible basis 8 for registering in Michigan, and that's because a law 9 in another state requires registration.</p> <p>10 Q. And in that case, here on the -- I guess the third set 11 of boxes; I guess you could say.</p> <p>12 A. I could see your cursor moving around so --</p> <p>13 Q. Okay. I'm just trying to make it clear for the record 14 here.</p> <p>15 So this box is just convicting state 16 required registration. So if it's not comparable to a 17 Michigan registrable offense, in that case, the person 18 is registered according to the other jurisdiction's 19 requirements around duration, tier, and publication, 20 correct?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. So I can show you this if you need to, but in 23 defendants' Answer on some of these questions, they 24 said, quote, "If a foreign conviction requires 25 reporting twice a year, but a Michigan requires</p>	<p>1 reporting four times a year, the registrant would be 2 required to report four times a year, and the inverse 3 is also true."</p> <p>4 I didn't understand what that meant. I can 5 show you the language if you need me to.</p> <p>6 A. I'm not exactly sure without context, but what I -- I 7 think the guidance has to reflect that, you know, 8 different states have different requirements, right. 9 So, you know, a lifetime registrant in some states may 10 only have to come in once a year. A lifetime 11 registrant in Michigan may only have to come -- may 12 come in four times a year. And I think as a general 13 matter, a very general matter, if we're talking about 14 a registration, duration is the one that's most 15 identifiable, right, how long somebody has to 16 register.</p> <p>17 I don't know that there's anything that 18 requires registration that we have to assume the 19 identical registration requirements. There's two 20 reasons why you have to register in Michigan. Either 21 it's substantially similar or because the other state 22 requires it. That's the threshold of registration 23 itself.</p> <p>24 Once the question to either one of those is 25 answered, then we do our best to put the person -- as</p>
<p>Page 141</p> <p>1 far as the type of requirements, to put them, for lack 2 of a better word, in a tier that most hopefully 3 corresponds to what they're expected to do. If it's 4 substantially similar, it's real easy. We tier it as 5 Michigan would tier them. If it's a comparison or 6 because a registration is required in another state, 7 then if -- you know, I'm looking at it, then I'm 8 looking at what's the duration, first, and then what 9 are the requirements that's most consistent in 10 Michigan with that duration.</p> <p>11 And I think that's kind of what that answer 12 might have been alluding to, but again, without 13 context -- I didn't review the Answer before it was 14 filed, and I'm not in a position to say why that 15 was -- what it was responding to or the context.</p> <p>16 Q. So looking at this, if we follow this flowchart, it's 17 something that's found to be comparable to Michigan 18 adult conviction or substantially similar to an adult 19 conviction, then you look at whether or not -- I'm 20 sorry -- let me rephrase that.</p> <p>21 If a person is -- if the offense is 22 substantially similar to a Michigan conviction but the 23 person wouldn't have to be registered in Michigan 24 because they were discharged before 10/1 of 1995, they 25 would still have to register in Michigan if the</p>	<p>Page 142</p> <p>1 convicting state requires registration, correct?</p> <p>2 MR. DAMICH: Objection. Ambiguous. 3 Confusing. Compound.</p> <p>4 THE WITNESS: Yes. I believe. Generally 5 speaking, yes, I believe so.</p> <p>6 BY MS. AUKERMAN:</p> <p>7 Q. And then moving across the flowchart, if a 8 non-Michigan offense is comparable to a Tier III 9 offense, they would register under the Michigan 10 requirements, correct?</p> <p>11 A. That's what that says, yes.</p> <p>12 Q. So that would then be lifetime quarterly public 13 registration, correct?</p> <p>14 A. If it's substantially similar to a Michigan Tier III 15 offense, then it would be Tier III requirements.</p> <p>16 Q. Okay. And if a non-Michigan offense is comparable to 17 a Michigan offense, but it's not comparable to Tier 18 III, then you would look at whether the convicting 19 state requires registration, correct?</p> <p>20 A. I'm not sure that's accounted for on...</p> <p>21 Q. I think that this sort of central box here that says, 22 "Does convicting state require registration?" So if 23 you follow the flowchart across, it says, the person 24 is not a Tier III, and then you go to, "Does the 25 convicting state require registration?"</p>

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<p>1 A. Yeah. So that -- if it's Tier III, it doesn't matter 2 'cause Tier III is lifetime, right. So now, if it's 3 not a Tier III, you come down. This is indicating use 4 the convicting state's duration if longer with the 5 Michigan requirements.</p> <p>6 Q. So you use whichever one is longer, the convicting 7 state or Michigan?</p> <p>8 A. Yes. That's always been my understanding and 9 guidance. I should say generally. There may be 10 something, a unique case, but generally, yes.</p> <p>11 Q. And then if it's not comparable to a Michigan 12 conviction, you would use the convicting state's 13 duration and reporting cycle?</p> <p>14 A. That's what that indicates, yes.</p> <p>15 Q. Okay. So I just want to make sure I understand this 16 correctly. If an out-of-state conviction is not 17 comparable to a Michigan registrable offense, then the 18 person still has to register if the convicting state 19 requires registration, correct?</p> <p>20 A. Yes.</p> <p>21 Q. If the convicting state doesn't require registration, 22 the person still has to register in Michigan if the 23 offense is considered comparable to a Michigan 24 registrable offense?</p> <p>25 A. Yes.</p>	<p>1 Q. And if a person is discharged before 10/1 of 1995 for 2 a conviction in the state of Michigan, that person 3 would not have to register, correct?</p> <p>4 A. Well, it depends on -- I'm trying to recall the 5 significance of the 10/1/95 date. But I believe when 6 SOR first went into effect, right, we had those 7 offenders for offenses that predated, and the initial 8 SOR captured those offenders. If they were still on 9 paper, probation, or parole, they hadn't completed 10 their sentence, and I believe that's the significance 11 of the 10/1/95 date that they were captured because 12 they had not yet run -- the time had not run.</p> <p>13 Q. But if someone was discharged prior to 10/1 of 1995, 14 they didn't have to register, correct?</p> <p>15 A. Correct. That's where that could potentially be an 16 issue for recaptured on the road for a felony 17 recapture. But, yes, if they were not on paper 18 discharged before 10/1/95, could be ten counts of 19 CSC-I, they had no obligation to register if they were 20 off paper. And I think all this is saying what the 21 out of state is if we're doing substantially similar, 22 then we have to do the same. We're treating the same 23 analysis.</p> <p>24 Q. But if they have a -- but they could still be required 25 to register for an offense before 10/1 of 1995 if the</p>
<p>Page 145</p> <p>1 out-of-state jurisdiction requires registration, 2 correct?</p> <p>3 A. Yes. Currently under SOR, that's true.</p> <p>4 Q. Okay. I'm looking at the juvenile adjudication chart 5 on page 2 of this Exhibit 12. Again, the first step 6 is to determine if the offense is comparable to a 7 Michigan juvenile adjudication, correct?</p> <p>8 A. Correct.</p> <p>9 Q. And when it says comparable to Michigan juvenile 10 adjudication, does that require both the determination 11 of substantial similarity of the offense and the 12 adjudication type is comparable to a Michigan juvenile 13 adjudication?</p> <p>14 A. Without -- there's a couple different questions in 15 there, but without looking at the statute itself, I 16 think the definition of a conviction captures, you 17 know, adult and juvenile, right. I mean, I think it 18 captures, and it defines what a conviction is.</p> <p>19 So if we're talking about the Michigan 20 definition of conviction, if it's substantially 21 similar to a Michigan listed offense as applicable to 22 juveniles, then that person would be required to 23 register in Michigan as a substantially similar 24 offense, yes.</p> <p>25 Q. If it's comparable to Michigan juvenile adjudication,</p>	<p>Page 146</p> <p>1 the person -- then you look to see if the child was 14 2 or older, correct?</p> <p>3 A. That's what that says, yes.</p> <p>4 Q. Okay. And if the person was under 14, you would still 5 require registration if the adjudicating state 6 requires registration, correct?</p> <p>7 A. Correct. It would not be substantially similar 8 because that person under 13 would not be required to 9 register in Michigan, period, had that crime occurred 10 in Michigan. Same offense occurred in Michigan, it 11 would not require registration. But in order to give 12 full faith and credit to another state's registry and 13 to not make Michigan a sanctuary state for sex 14 offenders, if the other state still requires 15 registration, SOR requires that juvenile to register.</p> <p>16 Q. So if you have an eight-year-old, if another state 17 requires eight year olds to register, they would be 18 required to register in Michigan if the adjudicating 19 state required them to do so?</p> <p>20 MR. DAMICH: Objection. Speculation.</p> <p>21 THE WITNESS: I believe that's what the 22 legislature decided, and it's consistent with federal 23 SORNA.</p> <p>24 BY MS. AUKERMAN:</p> <p>25 Q. If there's a child with a Tier I offense, does that</p>

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<p>1 child have to register in Michigan?</p> <p>2 A. Are you saying if they -- if the --</p> <p>3 Q. Let me restate that. If a child is adjudicated in</p> <p>4 Michigan for a Tier I offense, that child is not</p> <p>5 subject to registration in Michigan, correct?</p> <p>6 MR. DAMICH: Objection. Speculation.</p> <p>7 THE WITNESS: Without looking at the</p> <p>8 specific facts, I'm not prepared to give a blanket</p> <p>9 assertion. If the act -- I have to review the act,</p> <p>10 but general understanding, yeah, I don't -- whatever</p> <p>11 the act requires. If it meets the definition of</p> <p>12 conviction for a juvenile adjudication that requires</p> <p>13 registration under the plain language of the act, then</p> <p>14 that person is required to register. Without having</p> <p>15 reviewed it -- if the act now is at the point where</p> <p>16 offenders, juvenile offenders, who solely have a Tier</p> <p>17 I offense under the act have zero obligation to</p> <p>18 register, and, again, without verifying myself, but</p> <p>19 assuming for this question if that's true, then an</p> <p>20 out-of-state juvenile in the same position under the</p> <p>21 same facts would -- it would not be substantially</p> <p>22 similar. It would not have to register if it's</p> <p>23 substantially similar.</p> <p>24 BY MS. AUKERMAN:</p> <p>25 Q. But they might have to register if the adjudicating</p>	<p>1 state requires it?</p> <p>2 A. Absolutely, as clearly intended by the legislature and</p> <p>3 consistent with federal SORNA.</p> <p>4 Q. So a child adjudicated of a Tier I or a Tier II</p> <p>5 offense that's not registrable in Michigan would have</p> <p>6 to register in Michigan if the adjudicating state</p> <p>7 requires registration for the state, correct?</p> <p>8 A. I was waiting for the asked and answered, but this is</p> <p>9 about the fifth time I've answered it.</p> <p>10 Yes. You have to -- if the other state</p> <p>11 requires registration, the language is clear and</p> <p>12 consistent with federal SORNA, then that juvenile has</p> <p>13 to register in Michigan.</p> <p>14 Q. Okay. So let's talk about differences in age of</p> <p>15 consent.</p> <p>16 Are you aware that in Michigan the age of</p> <p>17 consent is 16?</p> <p>18 A. I am.</p> <p>19 Q. Are you aware that other states have different age of</p> <p>20 consent laws, and some make the age of consent 17 or</p> <p>21 18?</p> <p>22 A. I am.</p> <p>23 Q. How do you handle cases where someone is convicted in</p> <p>24 another state for conduct that is not a crime in</p> <p>25 Michigan with having sex with a 17-year-old.</p>
<p>Page 149</p> <p>1 A. Consistent with the exact analysis we just went</p> <p>2 through. Under a substantially similar comparison,</p> <p>3 it's not substantially similar because it wouldn't be</p> <p>4 a crime in Michigan. If it's not a crime in Michigan</p> <p>5 that requires registration, then you're not required</p> <p>6 to register as a substantially similar listed offense.</p> <p>7 But if the other state requires registration</p> <p>8 for the 17-year-old who has sex with their 15-year-old</p> <p>9 girlfriend, then Michigan, giving full faith and</p> <p>10 credit to the other state's law and consistent with</p> <p>11 federal SORNA, would require registration of that</p> <p>12 individual under the plain language of the act.</p> <p>13 Q. And that's true even though consensual sex with a</p> <p>14 17-year-old is not a crime in Michigan, correct?</p> <p>15 A. Correct. They're not registered because it's a crime</p> <p>16 in Michigan or substantially similar to a Michigan</p> <p>17 crime. They're registered because they made a choice</p> <p>18 to move to Michigan after committing a crime in a</p> <p>19 state that required registration. And Michigan giving</p> <p>20 full faith and credit to that state's laws consistent</p> <p>21 with federal SORNA.</p> <p>22 Q. Let's talk about federal convictions and foreign</p> <p>23 convictions. The charts that we were looking at</p> <p>24 talked about convicting states.</p> <p>25 What do you do when someone has a federal</p>	<p>Page 150</p> <p>1 conviction?</p> <p>2 A. Typically, again, the analyst would work through it,</p> <p>3 if they -- based on prior decisions. If they're</p> <p>4 comfortable making the decision, they would do so. If</p> <p>5 they had a question, they would elevate it. If it</p> <p>6 reached me, I will look at the facts and</p> <p>7 circumstances, and if it's substantially similar, then</p> <p>8 that's the basis to register. If its registration is</p> <p>9 required because another jurisdiction requires</p> <p>10 registration, then that's the basis of the</p> <p>11 registration as well.</p> <p>12 Q. So you follow the basic steps in the flowchart for</p> <p>13 federal convictions as well?</p> <p>14 A. Yeah. I believe so. I mean, I don't know that</p> <p>15 it's -- if it's an adult, out of state, substantially</p> <p>16 similar. So, I mean, in Michigan, if you had someone</p> <p>17 convicted of a federal CSAM charge, right, and they</p> <p>18 live in Michigan, they're gonna register in Michigan</p> <p>19 because federal law requires them to register.</p> <p>20 The same would be true for someone who had</p> <p>21 that federal CSAM charge in another state and then</p> <p>22 moves to Michigan. I think the same or similar</p> <p>23 analysis would apply.</p> <p>24 Q. Okay. Let me share my screen.</p> <p>25 MS. AUKERMAN: This is Exhibit 11. This is</p>

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<p>1 MCL 28.722 which is the definition section of SORA. 2 (Plaintiffs' Exhibit No. 11 was marked.) 3 BY MS. AUKERMAN: 4 Q. Do you recognize this? 5 A. Yes. 6 Q. Okay. So I'm looking at the definition of 7 substantially -- or not the definition. This is a -- 8 I'm sorry. I'm saying that very unclearly. 9 I'm looking at language around substantially 10 similar in the definition section, and it talks about 11 under a law of any state or any country where the 12 offense is substantially similar. 13 So do you also register for out-of-state -- 14 excuse me. Do you also register for foreign 15 convictions? 16 MR. DAMICH: Objection -- 17 THE WITNESS: I would think if -- I mean, if 18 it says any state or country, I'm assuming we do, but 19 I'm struggling to think of a specific analysis that I 20 did for adjudication in another country. 21 I think -- I mean, we've had -- I recall 22 some that may have occurred with U.S. Territories, you 23 know, Guam or Puerto Rico. Of other countries, I'm 24 not recalling a specific. I'm not saying I didn't 25 look at one, but I'm not recalling an example.</p>	<p>1 BY MS. AUKERMAN: 2 Q. Do you know if Michigan State Police does any 3 determination of whether the judicial system in the 4 other country satisfies due process? 5 A. Again, we are responsible for maintaining a registry. 6 The obligation to register is the individual's, not 7 the Michigan State Police. So we don't give legal 8 advice. If they come in and they don't register, and 9 a prosecutor thinks it's in violation and they can 10 establish a willful violation, they will. 11 Q. Are you aware that different countries have different 12 sexual mores so that, for example, a person might be 13 convicted in another country for having, you know, 14 nonmarital sex or having gay sex, things that are 15 perfectly legal in the United States? 16 A. Again, the registration -- I'd be more concerned with 17 the -- 18 Q. That's not my question. My question is are you aware 19 that different countries have different sexual mores 20 so that a person could be convicted in another country 21 for conduct like nonmarital sex or gay sex that is 22 legal in the United States? 23 A. No, I understood your question, but I think it's an 24 unfair question that I can't answer as simply as you 25 want because you're looking at the definition of</p>
<p>Page 153</p> <p>1 substantially similar. So if we're asking whether 2 someone from another country or another state has to 3 register because it's substantially similar, I think 4 you answered your own question. If you don't have to 5 register in Michigan for having nonmarital sex or gay 6 sex or other things that are legal in Michigan, then 7 it would not require registration in Michigan. 8 If the person is coming from another state 9 that requires registration, then we would give full 10 faith and credit to that state. I'm not -- I don't 11 believe SORA talks about giving full faith and credit 12 to another country's registration obligation. 13 Q. Would that depend on how the offense -- whether or not 14 the offense is substantially similar, or would that 15 depend on how the country defines the offense? So, 16 for example, if someone is convicted of sexual abuse 17 in another country? 18 A. No. I don't believe so because -- oh, sorry. 19 MR. DAMICH: Objection. Confusing. 20 Ambiguous. 21 THE WITNESS: Yeah, I mean, we're -- I think 22 for many of these questions, we're, you know, chasing 23 fairy tails like Rumplestiltskin and doing these 24 hypotheticals that, you know, I'm not even sure are 25 occurring.</p>	<p>Page 154</p> <p>1 The question is does it require registration 2 in Michigan. And the term used when we talk about 3 substantially similar, if you go back to the section 4 of SOR, it talks about, you know, crimes, and it lists 5 MCLs. And then it says an offense substantially 6 similar. 7 So in my mind, that doesn't necessarily mean 8 you look at the elements or the definition of another 9 state. There are occasions where you might have to 10 look at the underlying facts of the offense. What did 11 this person do according to the facts, you know, which 12 may be depicted and determined from the elements or it 13 may not. 14 But if the facts are this person had 15 consensual sex in another country with a 17-year-old, 16 then, regardless of what that country defines a minor, 17 much like what we would say what other state defines a 18 minor, we would look and say is that offense 19 substantially similar to a Michigan offense. And my 20 guess in that hypothetical, what-if situation, if that 21 actually came to me, I would say that wouldn't require 22 registration solely because it's substantially similar 23 to a Michigan offense. 24 Because at the end of the day it's 25 consensual sex between two males, two females, or with</p>

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<p>1 someone who is 17 years old. That is not 2 substantially similar to a Michigan offense, and I 3 don't care what the other -- if the other country has 4 a different definition because SORA uses term 5 "offense," not statute of another country.</p> <p>6 BY MS. AUKERMAN:</p> <p>7 Q. So you would be looking at the conduct rather than the 8 elements of the offense in deciding whether or not 9 something is substantially similar?</p> <p>10 A. At times, sometimes that's necessary. Sometimes other 11 state's statutes are bifurcated where the same 12 statutory section -- maybe it says something like a 13 person engages in sexual conduct and/or penetration 14 with a minor 13 to 15, right. I'm just throwing this 15 out there. Well, I don't know whether it's 16 penetration or contact, and so under their statute, it 17 could theoretically be both. And I've had occasions 18 where we'll say can you reach out and find the 19 evidence of the factual basis, so maybe it's a copy of 20 the plea, maybe it's the report, maybe it's the 21 examination, whatever it may be, tell me. You know, 22 how old was the victim, how old was the offender, and 23 what did they do. That's the offense. And sometimes 24 we have to parse that out.</p> <p>25 The statute may be sub- -- may be falls,</p>	<p>1 depending on the facts, on the two different Michigan 2 offenses that have two different tiers. But what the 3 person did as the offense, that's where we do the 4 analysis on on substantially similar. Sometimes 5 they're required to.</p> <p>6 Q. So if the -- if the out-of-state offense could be one. 7 You said the out-of-state in some cases 8 could look more like one offense and possibly more 9 like another offense, correct?</p> <p>10 A. Yes. We do the same thing with CPL determinations, 11 right. Some states talk about reckless driving, you 12 know, which has a section that includes very similar 13 to Michigan's reckless driving which could be a 14 disqualifier. But in that same statute, it says 15 Orville is 50 miles an hour as the speed limit. In 16 that state, it's a crime to go over 50 miles over the 17 speed limit.</p> <p>18 We would not deny a CPL if the underlying 19 basis was not because of our definition of reckless 20 driving is being applied, but for simply being X 21 number of miles over without that -- sometimes it 22 takes getting into the facts to make the comparison. 23 And that's all I'm saying, is sometimes with these out 24 of states, it talks about a substantially similar of 25 the offense. The offense is substantially similar to</p>
<p>Page 157</p> <p>1 a Michigan listed conviction. 2 MR. DAMICH: Miriam, are you trying to take 3 a break for lunch or anything? 4 MS. AUKERMAN: We can take a break if folks 5 want to take a break. Should we stop for -- how long 6 do you need? 7 MR. DAMICH: I'll leave it up to Steve. I 8 mean, for me, maybe ten minutes to tend to a 9 seven-year-old, and that's about it. 10 THE WITNESS: I can keep going. I can 11 break. Don't go on my account. Whatever you say. 12 MS. AUKERMAN: Why don't we take a short 13 break and come back at 12:45. Does that work? 14 THE WITNESS: Yes. 15 MS. AUKERMAN: Okay. Then let's do that. 16 (From 12:32 p.m. to 12:46 p.m., luncheon 17 recess was taken.) 18 BY MS. AUKERMAN: 19 Q. So we were talking about out-of-state offenses before 20 we took a break. 21 The SOR Unit staff testified that there was 22 a change in the process for handling out-of-state 23 offenses sometime in 2022. Are you aware of that? 24 A. Without context, I'm not aware of their process or a 25 change.</p>	<p>Page 158</p> <p>1 Q. They said that they were directed by the legal 2 department to change the way they handle out-of-state 3 offenses in 2022. 4 A. In what way? 5 Q. Well, it wasn't completely clear to us what the 6 changes were, so I was hoping you could clarify what 7 those charges were. 8 A. Yeah, I don't know. I have been routinely asked 9 questions regarding specific out-of-state offense, and 10 one thing I've done in my position is be very clear 11 that when I'm asked a question regarding a specific 12 offense or a specific offender, my response is 13 applicable to that offender. Historically, before I 14 ever even came to the department, you know, there's -- 15 you know, someone might take a guidance on a specific 16 question and then apply it to another question where 17 the guidance might be different so -- yeah. But 18 without context, I don't know what changed. 19 Q. I think it had something to do with using -- when the 20 other state's duration was used. 21 Does that ring a bell? 22 A. No. 23 MR. DAMICH: Objection. Speculation. 24 BY MS. AUKERMAN: 25 Q. So you don't know when they said that the legal said</p>

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<p>1 there was a change in 2020 -- or instructed them to 2 change a process in 2022, you don't know what that's 3 referring to?</p> <p>4 A. There's been lots of conversations in the last several 5 years of the SOR Unit of things that required, 6 perhaps, relook or redirection. Without context as to 7 what, I don't know what you're -- what change in 8 procedure or policy you're referring to.</p> <p>9 So had you asked them what specifically they 10 changed as a result of legal, I might be in a position 11 to respond.</p> <p>12 Q. Is it your sense that the basic process for 13 categorizing out-of-state offenses hasn't changed in 14 the last ten years?</p> <p>15 A. I don't know about ten, but certainly in the last 16 several years, at least, so at least since I've been 17 here. The general understanding of the process is 18 consistent with what I talked about or testified to 19 previously, that there's two avenues in which someone 20 from another state can be required to register. And 21 one or both may apply, and the -- so depending on the 22 circumstances, which one applies at a given location, 23 the facts of that registrant's record and situation 24 are going to dictate the guidance that's followed.</p> <p>25 Q. Okay. Let's look at Exhibit 13.</p>	<p>1 MS. AUKERMAN: Mark this as Exhibit 13. 2 This is a PACC table. 3 (Plaintiffs' Exhibit No. 13 was marked.)</p> <p>4 BY MS. AUKERMAN: 5 Q. Do you recognize this document? 6 A. Not without glasses. Hold on one second. 7 Q. It is a little small. I can see if I can make it 8 bigger. 9 A. Yeah, I've never seen this before in my life. 10 Q. You're not familiar with this document? 11 A. I'm not. 12 Q. It appears to be a table of out-of-state offenses and 13 how they're categorized. Do you see that? 14 A. I would agree that that's what it appears to be, yes. 15 Q. Okay. So this was produced to us in discovery as 16 something that is used to determine substantially 17 similar offenses. 18 I take it this is not something that you 19 use? 20 A. No. I look at each case as it comes up. My -- this 21 is speculation, so take it for what it's worth. But 22 my guess is this is just a representation as 23 individual questions that have been asked over the 24 years, individual analysis of another state's specific 25 statute. This is their way of recording the guidance</p>
<p>Page 161</p> <p>1 they have historically received. And then to the 2 extent it continues to get parsed out as more offenses 3 get added, then they would add this to the table. 4 So, again, speculation, this is when I talk 5 about how I don't see every offense that comes in. 6 They make determinations, and then if they have a 7 question, that comes up to me if it's not clear. This 8 appears to be an internal working document that helps 9 them through those more routine questions that come 10 in, so that they're given consistent decisions based 11 on guidance they receive. And then, you know, as new 12 ones comes up or something from left field or 13 something that is unique, then I may get asked a 14 question. 15 Q. And do you know if there are offenses programmed into 16 the MSOR database out-of-state offenses to 17 automatically tier? 18 MR. DAMICH: Object to foundation. 19 THE WITNESS: I don't know. I know when 20 the -- and you're well aware 'cause through discovery 21 with the previous cases of the limitations on 22 OffenderWatch, right, when -- you know, it sounds so 23 simple. Let's just generate this report, and then it 24 wasn't as easy as just pushing a few buttons. 25 So I do know that, for example, when they</p>	<p>Page 162</p> <p>1 put out for the new program, that, you know, the 2 general guidance that I gave is we're gonna do what 3 the statute requires us to do. But to the extent that 4 we can build a system in place, forward thinking, that 5 we can respond in the event the legislature or a court 6 requires us to go in a different direction, that the 7 system -- to the extent we're able to, you know, 8 prepare in advance, that the system is designed to do 9 that. 10 And I think that might go back to some of 11 your questions regarding the capabilities, whether 12 they're there or not, but the capabilities they were 13 looking to do. Not that we intended or wanted to 14 utilize the capabilities at the current time, but if 15 required to do so in the future that the system would 16 be built in a way to allow for that possibility if 17 required by statute or court order to do so. And so, 18 but what -- 19 BY MS. AUKERMAN: 20 Q. So we're getting far afield from my question, 21 Mr. Beatty. 22 A. Okay. 23 Q. Let's stay focused here. 24 So you testified earlier that sometimes 25 there's already been a determination that an</p>
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<p>1 out-of-state offense is substantially similar to a 2 certain Michigan offense, correct?</p> <p>3 A. I want to qualify that. There's been a previous 4 determination of a similar offense carrying that same 5 offense, statutory citation that had a determination. 6 Some through repetition or need, it's clear that 7 there's not enough variance to require further review, 8 and those ones, they would go ahead and make the 9 determination.</p> <p>10 Others, even if we made a determination on 11 that statute before, as I said before, there could be 12 a nuance that would require further evaluation, even 13 though we previously made a determination on that 14 statute. That's where it comes into, you know, the 15 statute has two different variables that might lead to 16 two different queries from substantially similar, and 17 we might have to get facts to see how that statute and 18 that determination is going to apply in that specific 19 case.</p> <p>20 So for a broad general rule that, well, once 21 determined, always determined, I would disagree with 22 that statement. For some offenses, I would say that 23 may hold true. For others, even if we made previous 24 determination, it still may require determination each 25 time it comes up because of the necessity of getting</p>	<p>1 into the facts. 2 Q. So the SOR Unit staff testified that, essentially, 3 this code table is programmed into the MSOR database. 4 Do you have any reason to dispute that? 5 MR. DAMICH: Objection. Speculation. 6 THE WITNESS: I take no position on what 7 their -- you'd have to ask them. That's the answer 8 they gave. It is what it is. 9 BY MS. AUKERMAN: 10 Q. Okay. Do you -- I realize that you haven't seen this 11 document before, but we're trying to understand it. 12 Do you know what CRR refers to? 13 MR. DAMICH: Objection. Lack of foundation. 14 THE WITNESS: I don't. 15 BY MS. AUKERMAN: 16 Q. MIA? 17 MR. DAMICH: Objection. Lack of foundation. 18 He testified he hasn't seen this document before. 19 MS. AUKERMAN: I understand. He may 20 understand what these abbreviations mean. 21 THE WITNESS: Yeah, other than tier level, I 22 don't know what any of those other definitions are. 23 They're not ringing a bell to me. 24 BY MS. AUKERMAN: 25 Q. Okay. Let me see if I can hide these just for looking</p>
<p>Page 165</p> <p>1 at a slightly cleaner document. 2 Do you see that Column R is for approved by 3 MSP legal? 4 A. I see it. 5 Q. When I sorted that column, I got 18 cases. Does that 6 mean that other cases have not been approved? 7 MR. DAMICH: Objection. Lack of foundation. 8 The witness has already said he hasn't seen this 9 document. 10 THE WITNESS: Yeah, I have no idea what 11 that's intended to mean. I mean, other than the ones 12 where there is an indicator, then that would seem to 13 suggest that someone in legal responded to a question 14 regarding that offense at some point in time. 15 BY MS. AUKERMAN: 16 Q. So let's talk about how -- since you're not familiar 17 with this document, let's talk about some of the 18 actual practical process for classifying out-of-state 19 offenses. 20 Can you walk me through what happens when a 21 person with an out-of-state commission moves to 22 Michigan? 23 A. No. 24 Q. Okay. What can you tell me about that? 25 A. Well, if you want to talk about a specific offender</p>	<p>Page 166</p> <p>1 who moves to Michigan, I don't know what they're -- 2 they have the obligation to register, so what they're 3 process is to comply with the law of the state they're 4 moving to, I'm assuming they have to register their 5 car and title. There's other laws they have to follow 6 when they come to Michigan and move to Michigan and 7 get a new license that they somehow manage to do. 8 This is just another one when they come to Michigan. 9 Q. So what I'm asking you -- and so someone moves to 10 Grand Rapids, Michigan, goes in to a report and says, 11 "Hey, I'm moving here from California. I was a 12 registered sex offender in California, and now I'm 13 moving to Michigan." What happens next? 14 MR. DAMICH: Objection. Speculation. 15 THE WITNESS: I would assume anyone who 16 comes in to register, my guidance would be that we 17 don't turn anybody away who wants to register. If 18 they believe they have an obligation to register, they 19 would get the explanation of duties, and they'll 20 register. 21 If they later determine that, hey, I'm not 22 sure that I actually have to do this, and through the 23 consultation of their attorneys, then they can take 24 whatever steps they seem to make. And sometimes that 25 step may be I'm making the choice not to register</p>

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<p>1 because I don't think I have to. And they may try and 2 do that without a court order supporting them, and 3 maybe they're right or maybe they're wrong. But 4 that's on them.</p> <p>5 BY MS. AUKERMAN:</p> <p>6 Q. Okay. So we're getting off of the question. What I'm 7 trying to understand here is the process used by the 8 Michigan State Police for determining whether an 9 out-of-state person has to register, and what the tier 10 and duration and publication requirements are. So I'm 11 trying to understand in a basic level when the person 12 first shows up in the SOR Unit.</p> <p>13 The SOR Unit gets information, hey, this 14 person tried to register in Grand Rapids. What 15 happens next?</p> <p>16 A. So the person doesn't show up in the SOR Unit. The 17 person shows up in Grand Rapids, is given an 18 explanation of duties because they believe they have 19 an obligation under federal and state law to comply. 20 Whether if it's a close call, if they want to avoid 21 prosecution, they do it.</p> <p>22 That registration gets into the system and 23 comes, I would assume, somewhere to the SOR Unit in 24 which case the charts that you previously looked at 25 would guide where it falls within the system. If it's</p>	<p>1 substantially similar, that's one avenue they have to 2 register. If they're -- checking with the other 3 state, what are their reporting requirements. 4 I'm aware of our SOR Unit reaching out to 5 other states and say, hey, this person is coming to 6 us. What are the legal obligations in your state, the 7 convicting state, and then making sure there's an 8 understanding of what the requirements of the other 9 state are. And then the charts that you previously 10 showed is the process.</p> <p>11 Q. So are there people who are automatically classified 12 by the MSOR database based on a prior determination 13 that offense X in California is comparable to, you 14 know, CSC-III in Michigan. And, therefore, the system 15 categorizes them based on that prior determination?</p> <p>16 MR. DAMICH: Object to form.</p> <p>17 THE WITNESS: Yeah, I don't know exactly 18 which, if any, categories are automatically 19 categorized. There may be some that are so clear that 20 it can happen automatically, but whether it happens or 21 can't happen, I don't know. That's a system question. 22 That's not in my shop.</p> <p>23 BY MS. AUKERMAN:</p> <p>24 Q. And you wouldn't see -- if there are cases that get 25 classified automatically, you wouldn't see those?</p>
<p>Page 169</p> <p>1 A. You're asking me in a situation that we haven't 2 established occurs, that if it occurs, whether I may 3 or may not see something that may or may not be 4 occurring. I guess I don't understand the question. 5 Q. I'm saying that SOR Unit staff testified that the MSP 6 database, the MSOR database automatically assigns 7 people to certain tiers based on prior determinations 8 of substantial similarity. And I'm asking you whether 9 you would see those cases?</p> <p>10 MR. DAMICH: Objection. Speculation.</p> <p>11 THE WITNESS: I would not see the case 12 unless it was brought to my attention for some reason. 13 So maybe if there's an initial sorting that's 14 happened. If that's what they testified to and that's 15 their answer, that there's initial sorting. And then 16 the person says, "Wait. I don't think this is right." 17 Or something prompts them to take a look at an 18 individual record, if they have a question about that 19 individual registrant and record and they reach out to 20 me, then, yeah I'll provide whatever guidance that I 21 deem to be appropriate in that moment on those facts. 22 But if you're asking if I automatically see 23 communications that come in for 40,000 registrants as 24 40,000 registrants' information come in and verify an 25 update, the answer to that is no.</p>	<p>Page 170</p> <p>1 BY MS. AUKERMAN: 2 Q. How many out-of-state registrant questions do you get 3 in a month? 4 MR. DAMICH: Objection. Lack of foundation.</p> <p>5 THE WITNESS: It varies. I think in light 6 of the litigation, I'm seeing a lot more than I used 7 to because I think everyone wants, "Well, I want to 8 make sure we're doing this right." And I've pushed 9 back and said, listen, you know, you are the SOR Unit. 10 You have responsibilities.</p> <p>11 Just like I don't ride around in every 12 patrol car and give a brief -- a thumbs up as to a 13 speeding stop. I don't follow them around with every 14 one of their determinations. And I also have to 15 stress that when responding to these questions, give 16 the response on behalf of the department. Don't say, 17 well, our legal said this or the attorney general said 18 that because that's irrelevant. A determination is 19 the department's determination is what the SOR Unit 20 says it is. Whatever that is on a given issue, that's 21 the answer.</p> <p>22 And if you or a registrant or anyone else 23 thinks there's a problem with it, okay. Ball's in 24 your court. Do something. But we're in the business 25 of providing legal advise or guesses. And the SOR</p>

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<p>1 Unit should be doing its job to the best of its 2 abilities. And whatever decision is made, that's up 3 for the courts and others to decide whether it was 4 appropriate.</p> <p>5 BY MS. AUKERMAN:</p> <p>6 Q. So back to my question about how many of these cases 7 you see, can you -- is it closer to five a month 8 out-of-state registration questions? One a month? 9 Ten a month?</p> <p>10 MR. DAMICH: Objection. Calls for 11 speculation.</p> <p>12 THE WITNESS: Yes. It would be a complete 13 guess. I mean, it's anywhere from none to --</p> <p>14 BY MS. AUKERMAN:</p> <p>15 Q. I'm not holding you to that. I'm asking for 16 approximation about are you seeing, you know, 100 17 queries a month or are you seeing five queries a 18 month?</p> <p>19 MR. DAMICH: Objection.</p> <p>20 THE WITNESS: Speculate, I mean, less than 21 ten. Some months zero, some months more. I don't 22 know that I can say ten in a month, but if that's a 23 range you're trying to find. Maybe zero, maybe six or 24 seven, somewhere in there. I mean, it's a complete 25 guess.</p>	<p>1 BY MS. AUKERMAN: 2 Q. Okay. And so the SOR Unit, you know, has this 3 out-of-state offender coming in, and if the victim age 4 is important for determining the offense tiering, how 5 does the SOR Unit staff determine the victim age? 6 MR. DAMICH: Objection. Speculation. 7 THE WITNESS: Well, a couple -- are we 8 talking about someone's required to register because 9 the offense is substantially similar to a Michigan 10 listed offense or someone -- 11 BY MS. AUKERMAN: 12 Q. Yes. 13 A. Okay. So we're not talking about someone solely 14 required to register because of the other state's 15 obligations? 16 Q. Right, if we find an offense as substantially similar 17 to a Michigan offense that requires registration if 18 the victim is under 16. 19 A. Okay. Well, if the documentation of records are not 20 apparent, but sometimes the charge itself, you know, 21 indicates -- you know, basic accounting, right, 22 somebody convicted of a crime, then there's actually a 23 factual basis based on the element. 24 So there's only one set of elements of 25 another state's offense, then you cannot be convicted</p>
<p>Page 173</p> <p>1 of a crime unless the victim is, you know, 13 to 15 2 like Michigan, right. Let's say. Or less than 13, 3 right, whatever it is. If the elements themselves 4 have formed that factual basis of that conviction, 5 make it clear that the age is within something that 6 dictates the answer to us, then we're -- we can move 7 forward with whatever it is we need to do with that 8 information.</p> <p>9 If it's not apparent or there's a state 10 where it's a range, you know, 13 to 17, or 11 something -- I'm just throwing this out there -- where 12 it may or may not have an impact on whether -- where 13 the person is tiered or even have to register at all, 14 that's one where you'd have to reach out and get 15 additional factual information. What was the age of 16 the offender? What was the age of the victim, and 17 what was the specific act that was done to then see 18 which offense, as that offense, those facts, what it's 19 substantially similar to.</p> <p>20 BY MS. AUKERMAN:</p> <p>21 Q. Are you necessarily consulted? I mean, if they get 22 the -- if they're able to get the victim age 23 information, does that come to you?</p> <p>24 A. Not unless they have a question.</p> <p>25 Q. Okay.</p>	<p>Page 174</p> <p>1 A. If they're coming from another state that requires 2 registration that presumably that other state has 3 verified the necessary information apply to federal 4 SORNA or whatever the requirements of that state, and 5 usually, I think they have regular contact or 6 communications with the registry authorities in other 7 states. And they're probably sharing information of, 8 hey, this person is coming your way. This is what we 9 know. And if it was good enough for that state to 10 register based on their determination of the age of 11 the victim, that's probably good enough to at least 12 figure out where this person starts out. Whatever our 13 determination is, ultimately, whether they comply with 14 that or not is a question for a prosecutor to 15 determine whether there's a willful violation. 16 Q. So let me look at -- let's look again at this PACC 17 Code Table, Exhibit 13. So I just want to walk 18 through some examples to make sure I'm understanding 19 this.</p> <p>20 So let's look at -- this is Arkansas offense 21 11.41.458. Do you see that on the chart?</p> <p>22 A. I see it.</p> <p>23 Q. So this is indecent exposure in the first degree. 24 Do you know if that offense is listed here 25 because it's substantially similar to a Michigan</p>

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<p>1 offense or was this -- I mean, which of the two 2 paths --</p> <p>3 A. I don't know. I haven't seen this document as I've 4 testified to before. I don't know how and under what 5 circumstance it's used. And the reference of PACC 6 Codes, I understand why they're used for universal or, 7 you know, whatever. I don't deal with PACC Codes. I 8 would specifically request if you're asking me to look 9 at a statute, then give me the correct citation 'cause 10 I'll look at the statute itself. PACC Codes are not 11 always indicative of the violation. PACC Codes are a 12 data tracking type of code.</p> <p>13 I would determine what the actual statute of 14 conviction was, and then I would typically go to that 15 statute and read it as anyone can and then go from 16 there.</p> <p>17 Q. So it looks like someone here made a determination 18 that indecent exposure in the first degree is 19 comparable to Tier I in Michigan, correct?</p> <p>20 MR. DAMICH: Objection. Speculation.</p> <p>21 THE WITNESS: Yeah. I don't know the 22 purpose of this document.</p> <p>23 BY MS. AUKERMAN:</p> <p>24 Q. Okay. Do you know offhand if indecent exposure is a 25 registrable offense in Michigan?</p>	<p>1 MR. DAMICH: Objection. Calls for 2 speculation. Lack of foundation.</p> <p>3 THE WITNESS: Again, I would need to go to 4 the definition section 722 to look and see. Isn't 5 indecent exposure -- what's the actual code?</p> <p>6 You're pointing to Arkansas. Is that 7 750.145c? Is that -- I'm not pulling it up. I'm just 8 working from memory. Is it, or is that accosting? 9 I'm confused.</p> <p>10 But whatever the SORA says, if it gives a 11 code, and some of them say in the section, and they'll 12 say if the victim is, you know, X age, then it would 13 be if the victim was X age substantially similar 14 assuming the elements are substantially similar.</p> <p>15 BY MS. AUKERMAN:</p> <p>16 Q. I may need to go -- we may need to take a break at 17 some point, so I can go through some of these and pull 18 up some of the statutes.</p> <p>19 A. Well, and the only thing I would say is before we do 20 that, is just as a matter of general concern, you 21 know, this is a 30(b)(6) deposition, and so I'm one of 22 maybe eight attorneys in my department. So going into 23 my head and analysis and sorting through statute is 24 not information as with a general knowledge and 25 understanding of the department as a whole. So I just</p>
<p>Page 177</p> <p>1 have a concern of poking Steve's brain for legal 2 analysis and opinions because that's, to me, not 3 appropriate for a 30(b)(6) definition as I'm looking 4 at the rules because it's information that's not known 5 or reasonably available to the department.</p> <p>6 Q. Yeah. I mean, we can go back to the notice, but let's 7 put a pause on this for a bit since you're not 8 familiar with this chart.</p> <p>9 So in discovery-requested documents related 10 to the classification of out-of-state offenses, we 11 received about 42 pages of emails sharing 12 communication within the SOR Unit and MSP legal 13 regarding those classifications.</p> <p>14 Do you think 42 pages of email is all the 15 emails that there are regarding communications between 16 yourself and the -- between the legal staff and the 17 SOR Unit about classification of out-of-state 18 offenders?</p> <p>19 MR. DAMICH: Objection to form. It's 20 compound. It's ambiguous. It causes you to 21 speculate.</p> <p>22 THE WITNESS: Yeah, I would say -- and I 23 raised this concern in discovery. I don't know what 24 went to you. I would object to any of the 42 emails 25 that came from me to the SOR Unit being provided in</p>	<p>1 Page 178</p> <p>1 discovery 'cause I believe they're privileged 2 communications. I can tell you there's far more than 3 that, but I would object to you getting any analysis 4 or advice or guidance that I gave to individual 5 members on the department on their ability to comply 6 with SOR as being protected.</p> <p>7 BY MS. AUKERMAN:</p> <p>8 Q. Do you know how substantially similar 9 determinations -- excuse me. Let me restate that. 10 Do you know how historically tier 11 classification decisions were made for out-of-state 12 offenders when SORA was amended in 2011?</p> <p>13 MR. DAMICH: Objection. Lack of foundation.</p> <p>14 THE WITNESS: I came to the department in 15 2013, so I have no knowledge of what the department 16 did in 2011 when the statute was changed.</p> <p>17 BY MS. AUKERMAN:</p> <p>18 Q. You worked with the Michigan State Police when Does 1 19 was being litigated, correct?</p> <p>20 A. If it was after October of 2013, then yes.</p> <p>21 Q. Are you aware that during Does 1, MSP's staff 22 testified that classification of out-of-state offenses 23 was being done by an intern?</p> <p>24 MR. DAMICH: Objection. Speculation.</p> <p>25 THE WITNESS: I'm not familiar with the</p>

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<p>1 transcripts of that discovery of the depositions that 2 were taken.</p> <p>3 Wouldn't that have been decided or an issue 4 in the earlier litigation and not in relation in the 5 new SORA?</p> <p>6 BY MS. AUKERMAN:</p> <p>7 Q. Since 2013 when you've been at the department, has 8 anyone gone back to review past classifications of 9 out-of-state offenders?</p> <p>10 MR. DAMICH: Objection. Ambiguous.</p> <p>11 THE WITNESS: I think if you have a concern 12 regarding any one of you clients in this class action 13 that they've been classified improperly, then you 14 should bring that to our attention, and we will 15 promptly take a look at it.</p> <p>16 BY MS. AUKERMAN:</p> <p>17 Q. That's not my question, Mr. Beatty. I'd ask you to 18 please remember our conversation in the beginning 19 about answering the questions that I'm asking you. My 20 question is whether or not the MSP has gone back to 21 look at -- let me restate that.</p> <p>22 MS. AUKERMAN: Actually, Ms. Apley, could 23 you read back that question.</p> <p>24 (At 1:15 p.m., the record was read back.)</p> <p>25 THE WITNESS: Can you clarify whether you're</p>	<p>1 asking about all past out-of-state offenders or some 2 past out-of-state offenders?</p> <p>3 BY MS. AUKERMAN:</p> <p>4 Q. I'm talking about whether there has been a review of 5 prior determinations, not an individual case-by-case 6 review, but an effort to go back and determine whether 7 or not classifications were done appropriately.</p> <p>8 A. I'm confused by the question because if it's a general 9 review, not all of them, and how is it a review of all 10 them. I'm not understanding.</p> <p>11 Have there been occasions where issues have 12 been brought to our -- a concern has been brought to 13 our attention from either a registrant or a 14 registrant's attorney, a change in the statute, 15 communications coming through the attorney general's 16 office of, hey, take a look at this person, 17 communications coming from the department of 18 corrections of, hey, take a look at this person.</p> <p>19 I can tell you that as issues come to our 20 attention, I believe the SOR Unit reviews those on a 21 case-by-case basis.</p> <p>22 Q. So there's been individual reviews in individual 23 cases. Is that accurate?</p> <p>24 A. Correct. Or if there was a change in the statute that 25 required a broad review. Say HYTAs, right, that maybe</p>
<p>Page 181</p> <p>1 there was a review of all HYTAs type of thing, and now 2 there's questions more recently coming up regarding 3 juveniles and when they were adjudicated dispositions. 4 We probably got that down to the SOR Unit, and we'll 5 probably have some information on that to share 6 shortly. So as issues came up or have come up.</p> <p>7 But the only way to review every record to 8 make a determination of whether an out-of-state 9 offender is to review every individual record. So I 10 was confused by your question when you qualified it by 11 saying, you know, without going into every individual 12 record, has the department undertaken the step. 13 Because the only way to undertake the step as to all 14 offenders is to look at every individual record, which 15 hasn't happened by now.</p> <p>16 Q. So you haven't looked at every individual record?</p> <p>17 A. Again, persons are responsible --</p> <p>18 Q. Okay.</p> <p>19 A. Okay.</p> <p>20 Q. Let me withdraw my question.</p> <p>21 So someone who is classified in 2011 based 22 on an out-of-state offense as a Tier III offender, 23 would not as a matter of course have been reviewed to 24 see if that classification was correct?</p> <p>25 MR. DAMICH: Objection to form. Calls for</p>	<p>Page 182</p> <p>1 speculation. Ambiguous.</p> <p>2 THE WITNESS: If that record came to our 3 attention in some manner and required to look at the 4 issues that you're talking about, then I'm assuming 5 those issues are looked at. The SOR Unit staff 6 obviously has the authority anytime they're in a 7 record if they see something that causes some concern 8 is to take the appropriate action.</p> <p>9 But you're asking if a structured review of 10 every record of a person who is required to register 11 since 2011 has been undertaken. I'm not aware of 12 that. But at the same token, in light of all the 13 litigation and all the records that have been looked 14 at since this started, it wouldn't surprise me if most 15 if not many or most of those records have not since 16 been individually looked at. But I can't tell you 17 that it was a single project undertaken to look at all 18 of those.</p> <p>19 BY MS. AUKERMAN:</p> <p>20 Q. There's been no structured review of out-of-state 21 offenders who have been classified since 2011?</p> <p>22 MR. DAMICH: Objection. Lack of foundation.</p> <p>23 BY MS. AUKERMAN:</p> <p>24 Q. Correct?</p> <p>25 A. We maintain a registry.</p>

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<p>1 Q. Please answer the question. There's been no 2 structured review of out-of-state offenders -- 3 A. I don't know the answer. You'd have to ask the SOR 4 Unit as far as whether it's a structured review. I 5 can tell you a lot of these records have been 6 reviewed. I'm familiar with the review on a number of 7 records, but as far as a, quote/unquote, "structured 8 review" of every registrant on the record since 2011, 9 I don't think that's happened, but you would direct 10 that question to the SOR Unit. 11 Q. Let's talk about how you make determinations of 12 substantially similar. We talked about this a little 13 bit before. 14 What documents do you yourself use in 15 substantially similar determinations? 16 A. It depends on the case. 17 Q. Can you give us some examples? 18 A. Probably easier if you gave me some examples and I can 19 tell you what I would do. But I can tell you that 20 sometimes it's just a comparison of the statute, the 21 elements of the statute itself, as I've previously 22 testified to. 23 If the elements themselves are substantially 24 similar and there's only one path to conviction in the 25 other state, and that path is substantially similar to</p>	<p>1 the elements of a Michigan listed offense, then I 2 don't need to see anything else. If there's a statute 3 where there could be multiple paths to different 4 Michigan listed offenses, depending on the underlying 5 facts that were used to support that conviction 6 constitutionally in the other state, then that would 7 require additional factual information. 8 The source of that information could come 9 from different things. It could be court documents, 10 pleadings, police reports, transcripts, communications 11 from the other state registering authority saying this 12 is what happened. Again, we don't have to prove 13 beyond a reasonable doubt that the person is properly 14 classified. We maintain a registry. Sometimes things 15 get brought to our attention that requires to do 16 something different. Great. If anyone has knowledge 17 we should be doing something different, please present 18 it to us. We're happy to look at it. But it depends 19 on the case as to what to look at to make that 20 determination. 21 Q. Now, you testified that you hadn't seen the PACC Code 22 Table. 23 Do you keep a list for yourself of offenses 24 that you consider to be substantially similar? 25 A. Nope, 'cause I view individual registrants. So as a</p>
<p>Page 185</p> <p>1 case comes to me, I focus on the individual 2 registrant. And my answer is typically along the 3 lines of based on the information provided, it appears 4 this is where this person should be registered 5 according to the plain language of SORA. 6 Q. Do you do a new analysis each time -- let me phrase 7 that differently. 8 I assume sometimes you'll see a person who, 9 you know, say, is coming in from Ohio, and you've seen 10 that Ohio offense before. Do you go back to look at 11 prior determinations of that? 12 MR. DAMICH: Objection. Speculation. 13 THE WITNESS: Yeah, I mean, I think this 14 goes back to your earlier question of do I keep track 15 because, you know, statutes can change. So as a 16 request comes up to me, I'll look at the statute as of 17 it today. Like, if I have to look at the statute, I'm 18 gonna rely on something that I may have done, you 19 know, four or five years ago. 20 You know, to the extent that I may have 21 notes, information, or a recollection in my head 22 regarding that issue previously, yeah, I may consider 23 what I did previously, but I'm also gonna look at the 24 statute in its current form and make the 25 determination based on that offender and the questions</p>	<p>Page 186</p> <p>1 asked of me in that instance. 2 BY MS. AUKERMAN: 3 Q. What makes an offense substantially similar to a 4 Michigan offense? 5 A. Again, depends on the case. As I've testified 6 previously, sometimes the elements of the other state 7 are plainly similar to Michigan's offense. Having 8 sexual penetration with a 12-year-old, however slight, 9 in another state comes to Michigan, I don't care what 10 they call it. I don't care what they label it. They 11 can call it -- I don't know -- inappropriate, you 12 know, contact with a child. I don't care. But if the 13 underlying elements are sexual penetration with a 14 12-year-old, it doesn't take much to compare that to 15 the Michigan listed offense for CSC-I. And those, I 16 don't even see because I trust that an intern at the 17 lowest level could look at any statute and make that 18 determination. Whether they do or not or whether it's 19 an analyst, that's not a complicated question. If 20 something comes up that requires more analysis, then I 21 do more analysis. 22 Q. Are you familiar with the term categorical approach to 23 comparing offenses across jurisdictions? 24 A. Nope. 25 Q. So categorical approach is when you look just at the</p>

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<p>1 elements of the offense. 2 It sounds like the MSP does not use the 3 categorical approach; is that correct? 4 A. I disagree with that. We -- 5 MR. DAMICH: Objection. Form. Misstates 6 testimony. 7 BY MS. AUKERMAN: 8 Q. You testified that you sometimes look at the elements, 9 but sometimes you look beyond the elements, correct? 10 A. Right. So it sounds like we sometimes use a 11 categorical approach, and sometimes we don't. 12 Q. Okay. So you don't always use a categorical approach. 13 Sometimes you look at the elements, and sometimes you 14 don't? 15 A. I'm not comfortable using that term. I look at the 16 statute, and if you see "categorical approach" in 17 SORA, then I'll follow it. In the absence of that, I 18 don't know where you're getting this, or what the 19 basis is, or who talks about this stuff, or what's the 20 rationale for it. Like risk assessment, it may just 21 be another fairy tale. 22 Q. You consider information that's in police reports 23 about what the person allegedly did, correct? 24 A. At times. 25 Q. So let me see if I've got this right.</p>	<p>1 In determining whether or not a Michigan 2 offense is substantially similar to a Michigan 3 offense, you consider the language as a non-Michigan 4 statute, correct? 5 A. I would look at the language of the non-Michigan 6 statute, yes. 7 Q. You might look at police reports? 8 A. I might. 9 Q. You might look at charging documents? 10 A. Correct. 11 Q. You might look at presentence investigation reports? 12 A. To the extent those are provided, yes. 13 Q. You might look at probation and parole orders? 14 A. I guess it -- I don't know that an order has factual 15 information. It would be my experience as an 16 attorney -- I'm not sure what factual information. 17 Those usually say do this or don't do that. For my 18 determinations for an out-of-state registrant whether 19 they, you know, come in and pee three weeks or three 20 times a week, I don't -- that has nothing to do with 21 the determination. That doesn't have facts in it 22 usually. That has requirements not facts. 23 Q. Okay. Are there other types of documents that you 24 might review? 25 A. Yeah.</p>
<p>Page 189</p> <p>1 Q. "Yes"?</p> <p>2 A. Yes.</p> <p>3 Q. And what would those be?</p> <p>4 A. Whatever you haven't listed that may be an official 5 document of some sort that has factual information 6 within it.</p> <p>7 Q. Like what?</p> <p>8 A. Again, it's -- run through the list that you already 9 had. I mean, if we're talking about police reports, 10 court transcripts, email communications from another 11 registering authority that are describing facts, 12 statements made by the registrants themselves in a 13 letter saying please take a look at my registration 14 because -- you know, and then in their letter they're 15 describing facts of what they did. It could be any 16 number of things, so anything that contains factual 17 information that appears to be reliable, and it's 18 reasonably determined to be reliable, we can consider 19 that.</p> <p>20 Q. What do you consider "reliable"?</p> <p>21 A. Again, it depends on the case.</p> <p>22 Q. There's not a judicial finding that the conduct 23 occurred, correct?</p> <p>24 A. Well, if there's a conviction which is a judicial 25 finding, correct.</p>	<p>Page 190</p> <p>1 Q. But allegations in a police report haven't been 2 factually found to be true by a court, correct?</p> <p>3 A. Well, again, we're talking about out-of-state 4 offenders, right?</p> <p>5 Q. Out-of-state offenders.</p> <p>6 A. So it talks about an offense. So we're all well aware 7 of situations, right, and this actually where there 8 might be a distinction, I supposed, being out of state 9 you choose to move to Michigan after committing an 10 offense versus an in-state Michigan offense. 11 But, for example, an in-state Michigan 12 offense, you can have someone who violently penetrates 13 32 five-year-old kids, rapes an entire kindergarten 14 classroom, and for whatever reason, they go to a 15 prosecutor, and the prosecutor lets them plead to a 16 single count of accosting and soliciting a minor for 17 immoral purposes, right. That is the registration. 18 We are required to register based on that convicting 19 offense. 20 But we know that that's not what happened. 21 There's an exam transcript, and there's other 22 information, and the age of the victims are 23 established, but that's just by way of pleading out 24 what was done. In the other state, if that similar 25 type of thing happened, but we can establish that it</p>
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1 wasn't the equivalent of an accosting. I mean, that
2 may be what the convicting offense is.
3 There's nothing that limits us to say
4 there's a way they describe it. If we can factually
5 establish the basis that it actually involved multiple
6 penetrations of multiple victims under 13, then the
7 substantially similar comparison of that offense, what
8 they did, is to a Michigan CSC first degree Tier III,
9 regardless of what they -- what that conviction is, if
10 it can be factually supported for the higher -- base
11 if the offense can be established. But in that case,
12 it probably requires the registration of what that
13 other state requires as well.

14 So we can look at the facts. If we're not
15 able to make that determination or it's not clear,
16 then, yeah, we'll go with the -- if it's equivalent to
17 accosting, it's equivalent to accosting. But if it
18 can be established that what the person did, their
19 offense, factually, judicially, whatever you want to
20 call it, established, was substantially similar to a
21 more serious Michigan offense, then it's -- either
22 it's substantially similar or it's not, the offense.
23 And if it is, then that's where it gets -- it's
24 listed.
25 But at the end of the day, whatever we say

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1 doesn't really matter because it's their obligation to
2 register and ultimately it can be up to the courts or
3 the prosecutor to decide whether they complied with
4 that obligation regardless of what MSP tells them, and
5 whether it's a willful violation for failing to do so.
6 So we're doing our best to main the registry.

7 Q. So in the example you gave, that person who committed
8 that offense in Michigan might be registered as a Tier
9 I or a Tier II, whatever accosting requires, but the
10 out-of-state person who committed the exact same
11 conduct would be registered as a Tier III because
12 you're able to look at the documents and determine
13 that that person -- the underlying facts would support
14 a substantial similarity to CSC-I?

15 A. You're seeking a general rule from a specific
16 fantastical hypothetical that I gave talking about
17 someone who raped and murdered an entire kindergarten
18 class of another state. If you want to ask me about a
19 specific case and a specific violation and where that
20 would fall, then maybe that's a fair question, but,
21 you know...

22 Q. Okay. So let's look at some specific cases. These
23 are some -- let's mark this as Exhibit 14. These are
24 some emails, email string, from March of 2021 between
25 yourself and some members of the SOR Unit.

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1 (Plaintiffs' Exhibit No. 14 was marked.)
2 BY MS. AUKERMAN:
3 Q. Do you see that?
4 A. I see what I believe to be a protected attorney-client
5 privileged document, and I would object to you asking
6 questions about it.
7 Q. It was provided to us in discovery, and I'm gonna ask
8 questions about it.
9 A. Well, as an attorney, you're saying if you were
10 innocently or mistakenly provided attorney-client
11 protected documents, that that becomes fair game to
12 use against the witness who claims the privilege?
13 Is that what I understand your position to
14 be?
15 Q. I'm saying that the attorneys for the Michigan State
16 Police have not previously objected. They provided
17 these documents. They've been used in other
18 depositions. It would be up to the -- they haven't
19 previously objected to this, and so I tend to ask
20 questions about it.
21 A. Well, you can intend to, but this is my privilege. If
22 I'm the attorney giving legal advice. I believe it's
23 my privilege. No one's ever asked me if I've waived
24 that privilege.
25 I believe for a 30(b)(6), if you want to

1 reach the ultimate determination, that's fair game.
2 Ask what the determination was in a specific offender,
3 and then have at it. Whatever is right or wrong, you
4 can litigate that. The analysis, the deliberation,
5 what's in my mind as an attorney is outside the bounds
6 of the 30(b)(6). This is protected attorney-client
7 information. I object to being questioned on it.

8 And at the end of the day, if you believe
9 that the department or a member of the department
10 violated the constitutional rights of one of your
11 clients, you're gonna file a 1983 action against the
12 member, not the department. The department is immune
13 against the member. And so when I'm advising a member
14 of the department on how to comply with the law, that
15 is provided to them because they're the ones who face
16 potential liability in a 1983 action.

17 So I continue to object to questions about
18 specific advice I gave on a specific case, and the
19 basis for that opinion.

20 Again, the final determination, whoever this
21 person is that's blacked out, you know, that the MSP
22 decided this person is Tier I, a Tier II, whatever the
23 ultimate decision is, fine. That's our decision.
24 That's our answer. How we got there to me is
25 protected and privileged, and I'm not waiving it.

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<p>1 Q. Okay. Let's look at a different communication that 2 you're not part of. This is a set of emails from the 3 SOR Unit and John Gemellaro, who you testified earlier 4 was an attorney previously in the legal department. I 5 don't believe that you are listed on any of these 6 emails.</p> <p>7 Do you want to take a moment to review this?</p> <p>8 A. No, because, although, Mr. Gemellaro is no longer in 9 the department, I can represent that we've had similar 10 conversations and his concern at the time he would 11 also agree that these were -- again, to the extent 12 this is analysis and deliberative process of legal 13 guidance that's being given, I don't know that I have 14 standing to raise that privilege on his behalf. But I 15 think it's the same concern.</p> <p>16 The final determination that's made, I think 17 is fair game for the 30(b)(6). What is it that MSP 18 did or didn't do, I think that's the relevant 19 testimony for a 30(b)(6). But I'm not going to 20 comment on Mr. Gemellaro's legal guidance, nor do I 21 think I should have to, because I believe it to be 22 privileged as well. But I can't speak for him.</p> <p>23 Q. Okay. Since you can't speak for him, it's really up 24 to Mr. Damich if they want to assert the privilege, 25 but he hasn't done so, so --</p>	<p>1 MR. DAMICH: I'm going to do that right now 2 and assert the privilege and advise Mr. Beatty cannot 3 testify about the contents of any of these emails. As 4 he's saying, there are tons of not only 5 attorney-client privilege but also a deliberative 6 process privilege that he at MSP has represented to us 7 to take a look at again to see if we clawback and 8 redact certain prior productions.</p> <p>9 BY MS. AUKERMAN: 10 Q. So let's just talk -- you said we can talk about the 11 final determination. 12 So a person who is convicted under Florida 13 Statute 934.215, that's an unlawful use of a two-way 14 communications device, and I'll read to you -- I can 15 show it to you, but you don't want me to do that. So 16 I won't. So I'll just read it to you. The Florida 17 statute provides: 18 "Any person who uses a two-way 19 communications device, including, but not 20 limited to, a portable two-way wireless 21 communications device, to facilitate or further 22 the commission of any felony offense commits a 23 felony of the third degree...". 24 Do you have any reason to dispute that that's what the 25 statute provides?</p>
<p>Page 197</p> <p>1 A. I'm not going to comment on a statute without reading 2 it. 3 Q. Well, we can -- 4 A. There's some issues. Yeah, I'm not sure whether 5 that's the current statute. If you want to get to the 6 punch line of that this person is a Tier II, then I -- 7 and that's where that person presently is, then I have 8 no reason to dispute that. That's the department's 9 answer to as what we did in a particular case as to 10 that offense and that offender. That's fair. I'll 11 leave it up to others to decide whether that was the 12 right answer or not but... 13 Q. Okay. So let me just show you my screen here since -- 14 I've pulled up what appears to be the statute, a 15 current version of the statute. 16 Can you see that? 17 A. I can see it. 18 Q. So this is Florida 934.215. And that's individual -- 19 you agree that we can discuss the fact that that 20 individual who had that offense was required to 21 register in Michigan, correct? 22 A. Again, I'm -- all I've said was when you're talking 23 about those communications, whatever the final answer 24 of the department was, that's the final answer of the 25 department. It's up for others to decide whether it's</p>	<p>Page 198</p> <p>1 appropriate. 2 You're showing me a Florida statute without 3 any context as it pertains to a specific offender. I 4 don't have the corresponding or any statutes of 5 Michigan. Going back and forth, I can't really follow 6 along. I usually will look at things side by side and 7 do the comparison. What I'm not going to do is do a 8 comparison as an advisory and give you my legal 9 opinion as to whether these two statutes are 10 substantially similar or not because, again, that's 11 not information that's known or reasonably available 12 at the MSP, and it would be inappropriate for a 13 30(b)(6) deposition. 14 There are 1800 other persons in the 15 department -- or 800 other persons in the department 16 who are not attorneys. So asking for my stock and 17 trade, my analysis what's in my head, is not fair for 18 a 30(b)(6) deposition when it's not known or 19 reasonably available to the department. 20 You're attorneys. You guys can look at it 21 and make your own determination. Apply it to a 22 decision that MSP made, and if you think we did 23 something wrong, ball's in your court. 24 Q. Okay. So the 30(b)(6) deposition notice under No. 6 25 it says:</p>
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<p>1 "The Michigan State Police's 2 decisionmaking, decisions, and actions at the 3 policy, procedure and individual levels, 4 regarding whether a person must register in 5 Michigan based on a conviction or adjudication 6 from another jurisdiction, and what that 7 person's registration requirements are." 8 So I am asking you to discuss the process for 9 registration of out-of-state offenses, and you haven't 10 wanted to answer in general policies. So we've talked 11 about having to do that with respect to specific 12 examples. 13 I'm trying to give you a specific example. 14 You're objecting to that because you say it's 15 privileged. Now we're trying to look at statute as to 16 specific examples, and you're again objecting and 17 refusing to answer the question because you're saying 18 you can't do that. 19 So I'm asking you to look now at Florida 20 934.215, please, and tell me whether this offense has 21 a sexual element to it. Please look at the statute. 22 A. And, again, I would like respond to that first because 23 I disagree with the characterization. 24 You set a 30(b)(6) deposition notice. Under 25 Federal Rule of Civil Procedure, one, I have consented</p>	<p>1 to be a selective witness of the department. And, 2 two, the persons designated must testify about 3 information known or reasonably available to the 4 organization. That's Federal Rule of Civil Procedure 5 under Subsection 6. 6 When I received and was contacted about 7 being a 30(b)(6) witness, I pointed out that I had 8 concern regarding the overly broad, not nearly 9 tailored nature of the deposition notice that talks 10 about deliberative decision-making that would require 11 me to, A, get into attorney-client privilege 12 communications, deliberative communications, or 13 communications that required me to offer my personal 14 opinion, legal opinion, on interpretation of statutes 15 that I felt would be outside the Federal Rules of 16 Civil Procedure. And so I expressed that to my 17 attorney that concern. 18 I made it clear. I have no problem. If you 19 want to talk about decisions made by the department, 20 our decision is what it is. Point to an offender. 21 That's our decision. How we got to a decision and 22 deliberations that went into it, and the 23 attorney-client privileged communications that got in 24 there, I realize you use the word "decision-making," 25 but that doesn't trump the privileged nature of the</p>
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<p>1 something else, then, again, we may take -- it's the 2 offense we have to look at in that situation and what 3 Michigan offense is it substantially similar to. 4 So I'm not going to answer a question of is 5 this definitely a specific tiered offense in Michigan, 6 or does it definitely require registration in 7 Michigan, and MSP's policies as to this statute if 8 were presented to us because I can't. I answered 9 these questions. I give guidance as these come up. 10 At the end of the day, point to the offender and where 11 MSP said they had to register, that's our decision. 12 Do with it what you want. 13 Q. So under this statute, Florida 934.215, a person could 14 be convicted of this offense, the elements -- let me 15 say that again. 16 Under Florida 934.215, there is no sexual 17 element to the offense definition, correct? 18 A. I don't agree with that because -- 19 Q. Well, which element -- what part of the statute has a 20 sexual element? 21 A. The incorporating language of "further commission of 22 any felony offense." So I don't even know what that 23 other felony offense was relied upon as a predicate to 24 support this crime. If that other felony offense is 25 the functional equivalent of CSAM in Michigan, then I</p>	<p>1 would say, yes, the statute has a sexual component, 2 and as it incorporates the necessary predicate 3 offense. 4 If the underlying predicate offense is a 5 two-way communication to commit a home invasion, then 6 I would agree with you. That would not require 7 registration in Michigan, except for some reason that 8 person is required to register in Michigan for -- 9 because there was a child in the home at the time of 10 that home invasion in Florida, then they'd be required 11 to register in Michigan, not because of substantially 12 similar to a Michigan listed offense, because the 13 predicate felony and the offense itself doesn't 14 substantially -- is not substantially similar. But 15 the registration is required because the other state 16 requires it. So I disagree with the notion that it 17 doesn't contain a sexual component. It very well 18 could, but you need to know what that predicated 19 offense was. 20 Q. But if the predicate offense was burglary, there 21 wouldn't be a sexual element, correct? 22 A. Again, without knowing the facts in the burglary, then 23 generally speaking, I would have a hard shot of saying 24 it's substantially similar based on the very limited 25 information provided. And it could very well be that</p>
<p>Page 205</p> <p>1 the person who's required to register that offense, 2 either the additional information was there to make it 3 substantially similar, or the laws in that state 4 require registration 'cause there was a kid in the 5 home at the time, or whatever other reason. 6 So, yeah, I need to know the specific facts. 7 But at the end of the day, like I said, whatever our 8 decision was, whatever we classified -- even if we're 9 wrong, even if they say a person has no obligation to 10 register in Michigan, they could still be convicted 11 willfully violating SOR in Michigan because at the end 12 of the day, our opinion doesn't really matter. 13 MS. AUKERMAN: Okay. So I want to state for 14 the record that we're gonna hold this 30(b)(6) 15 deposition open because Mr. Beatty is not answering 16 the questions that were the topics of the 30(b)(6) 17 notice. We'll have to resolve that with defendants' 18 attorneys at a later point. Let's move on. 19 BY MS. AUKERMAN: 20 Q. If a person comes to Michigan with an out-of-state 21 offense and is under a deferral program in the other 22 state, does that require determination whether that 23 deferral program is comparable to the Holmes Youthful 24 Trainee Act? 25 MR. DAMICH: Objection. Ambiguous.</p>	<p>Page 206</p> <p>1 Compound. Speculative. 2 THE WITNESS: Define deferral and that state 3 that you're using your example. 4 BY MS. AUKERMAN: 5 Q. Well, different states have different deferral 6 programs that withhold conviction pending completion 7 typically of probation, for example. Michigan has a 8 program, the Holmes Youthful Trainee Act, that does 9 that as well. There are specific provisions about not 10 requiring people to register in Michigan under the 11 Holmes Youthful Trainee Act. 12 And my question is when you're looking at 13 out-of-state convictions, do you look at deferral 14 programs at the -- the countries of a deferral program 15 in determining whether that person needs to register 16 in Michigan. 17 MR. DAMICH: Same objection. Ambiguous. 18 Confusing. Compound. 19 THE WITNESS: Yeah, without knowing a 20 specific state and looked at the statute, I'm 21 struggling to -- it would depend on -- Michigan 22 defines a conviction, right, so whether it's in state 23 or out of state doesn't meet the definition of a 24 conviction. And the exclusions in Michigan's SOR, if 25 those apply, then I think those exclusions apply to</p>

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<p>1 that Michigan statute.</p> <p>2 The substantially similar is referring to</p> <p>3 the convicting offense, not the deferral, but I guess</p> <p>4 it would depend on the situation looking at it. You'd</p> <p>5 have to look at the other state because there's other</p> <p>6 states, for example, that have a deferring program but</p> <p>7 says this still requires registration, or this still</p> <p>8 prevents you from doing certain things or possessing a</p> <p>9 firearm, or things that are different or unique from</p> <p>10 Michigan that would take it outside of that analysis.</p> <p>11 You'd have to look at each state</p> <p>12 individually and each offender individually. If it</p> <p>13 meets the definition of a conviction, then it meets</p> <p>14 the definition of conviction. And if it's</p> <p>15 substantially similar, then that's a basis to</p> <p>16 register.</p> <p>17 BY MS. AUKERMAN:</p> <p>18 Q. So you have to determine whether the type of deferral</p> <p>19 program in the other state meets Michigan's definition</p> <p>20 of conviction?</p> <p>21 A. I think, yeah. I mean, we're generalizing here, but I</p> <p>22 think if it's substantially similar, the definitions</p> <p>23 under Michigan SORA mean things and so if it's a</p> <p>24 conviction.</p> <p>25 Q. Okay. Let's move on. Let's take an example from one</p>	<p>1 of our clients.</p> <p>2 So Mary Doe was convicted in Ohio of Ohio RC</p> <p>3 2907.04(A) and (B)(3), and she is not subject to</p> <p>4 registration in Ohio. So am I correct that the basis</p> <p>5 for her registration by the Michigan State Police</p> <p>6 would be that it's substantially similar to a Michigan</p> <p>7 registrable offense?</p> <p>8 MR. DAMICH: Objection. Foundation.</p> <p>9 THE WITNESS: Again, without reviewing your</p> <p>10 client's record, but I would -- if it doesn't require</p> <p>11 registration in Michigan, then I would say one of the</p> <p>12 two reasons she would be required to register in</p> <p>13 Michigan don't exist. If I accept that as a factually</p> <p>14 true statement, then the only way that she'd be</p> <p>15 required to register in Michigan is if it's</p> <p>16 substantially similar to a Michigan listed offense.</p> <p>17 MS. AUKERMAN: Okay. So let's take a look</p> <p>18 at the language of that Ohio statute. So that</p> <p>19 statute -- this is Exhibit 16.</p> <p>20 (Plaintiffs' Exhibit No. 16 was marked.)</p> <p>21 BY MS. AUKERMAN:</p> <p>22 Q. Ohio RC 2907.04 says:</p> <p>23 "No person who is eighteen years" or</p> <p>24 older of age -- I'm sorry.</p> <p>25 "No person who is eighteen years of age</p>
<p>Page 209</p> <p>1 or older shall engage in sexual conduct with</p> <p>2 another, who is not the spouse of the</p> <p>3 offender, when the offender knows the other</p> <p>4 person is thirteen years of age or older but</p> <p>5 less than sixteen years of age, or the offense</p> <p>6 [sic] is reckless in that regard."</p> <p>7 Do you see that?</p> <p>8 A. I see it, yes.</p> <p>9 Q. And then let's look at the definition of CSC-IV in</p> <p>10 Michigan. Can you see that?</p> <p>11 A. I do.</p> <p>12 Q. Okay. And that provides that CSC-IV, one of the ways</p> <p>13 is -- under Sub (a) is committed when the actor</p> <p>14 engages in sexual contact with another person who can</p> <p>15 be ages of 13 and 16, and the actor five or more years</p> <p>16 older than that person.</p> <p>17 MS. AUKERMAN: And that's MCL 755.20e, sub</p> <p>18 (a). I'm marking that as Exhibit 17.</p> <p>19 (Plaintiffs' Exhibit No. 17 was marked.)</p> <p>20 BY MS. AUKERMAN:</p> <p>21 Q. Do you see that?</p> <p>22 A. I do.</p> <p>23 Q. So having read the language of both those statutes, do</p> <p>24 you think that Ohio RC 2907.04 is substantially</p> <p>25 similar to CSC-IV?</p>	<p>Page 210</p> <p>1 A. I'm unable to answer that without doing further</p> <p>2 analysis. I don't -- I'm not familiar. I don't</p> <p>3 recall what the definition of sexual contact is in</p> <p>4 Ohio. Some states define contact, it encompasses the</p> <p>5 allegation of penetration. And so if it's an</p> <p>6 allegation of penetration and you went to 750.520c for</p> <p>7 CSC-III, you would see that there's five year --</p> <p>8 similar five-year language for acts of penetration.</p> <p>9 So that's a great example of where I would need to</p> <p>10 know whether it constitutes a contact, the offense.</p> <p>11 Forget how they characterize it. Did the offense</p> <p>12 involved penetration, or did it involve contact? If</p> <p>13 the offense involved penetration, then registration</p> <p>14 would be required in Michigan 'cause it's</p> <p>15 substantially similar to a CSC-III, even though both</p> <p>16 statutes use the word contact under that receptive</p> <p>17 statute.</p> <p>18 So I would need to know more information to</p> <p>19 say, you know, where your client landed on this. But,</p> <p>20 presumably, your client was a party in your Does</p> <p>21 litigation, and if that person wasn't required to be</p> <p>22 registered on the earlier litigation, then I'm not --</p> <p>23 then presumably is not a party -- doesn't need to be a</p> <p>24 party here.</p> <p>25 So it sounds like even under the previous</p>

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<p>1 Does, your client is still required to register under 2 the new SOR. So whatever she did or didn't do, it 3 wasn't enough to kick her out of the earlier case, and 4 here we are in the current case.</p> <p>5 Q. So in making this determination, you wouldn't just be 6 comparing Ohio 2907.04 with MCL 750.520e, correct? 7 You'd be looking at underlying offense 8 conduct?</p> <p>9 A. Maybe. But I also -- some states, their definition 10 section is in a different section, so I disagree to 11 the form of the question that talks looking at that 12 specific Ohio because if the definition of sexual 13 contact is provided in a different section, then I 14 would certainly be going to that definition as well.</p> <p>15 Q. Do you believe there's another statute that is a 16 closer analogue to 2907.04, another Michigan statute?</p> <p>17 A. Could you go back to the 2904 (sic)?</p> <p>18 Q. Sure. Do you see that?</p> <p>19 A. Yeah. Can you scroll down, please?</p> <p>20 Q. I don't think there's anything else.</p> <p>21 A. Oh, that's it?</p> <p>22 Q. Yeah.</p> <p>23 A. So, again, I don't see a definition of sexual conduct 24 as used in that statute, so I would -- unless I'm 25 staring at it and -- yeah, so I'm assuming the</p>	<p>1 definition section is provided in another section of 2 statute. 3 So, again, I would need to know what their 4 definition of sexual conduct is, and if that still 5 didn't provide clarity, then I would want to know what 6 person actually did. But, again, presumably if this 7 client of yours was still required to register under 8 the previous -- 9 Q. That's not responsive to my question, Mr. Beatty. 10 Do you believe reasonable people could 11 disagree about which offense is substantially similar? 12 MR. DAMICH: Objection. Foundation. 13 THE WITNESS: Again, I'm only advising our 14 members on our obligations under the SORA. Until 15 there's a court opinion that tells us specifically or 16 a specific provision of the statute or we're bound by 17 formal opinions of the attorney general, so unless 18 it's one of those three things that I can point to to 19 say we're required to interpret it this way, yes. 20 Anyone could have different opinions. That's what 21 litigation is for. That's why we're here. You have a 22 different opinion than others. 23 BY MS. AUKERMAN: 24 Q. Have you had attorneys in the past question decisions 25 made by the MSP about substantial similarity?</p>
<p>Page 213</p> <p>1 A. Have -- can you repeat that again? 2 Q. Have you had attorneys raise questions in the past 3 about substantial similarity that, you know, their 4 client wasn't properly tiered or isn't required to 5 register? 6 MR. DAMICH: Objection. Ambiguous. 7 THE WITNESS: I'm aware that we have 8 received communications along the lines of, "Dear MSP. 9 You say my client is a Tier III. I think my client is 10 a Tier II." Big reach there -- or Tier I, whatever it 11 may be. "I believe they no longer have a continuing 12 obligation to register. Please remove immediately." 13 I can tell you that when those come up, if they come 14 up, we've looked, and if we disagree -- if we made a 15 mistake, my guidance has always been if we've made a 16 clear mistake in statute, we should fix it 17 immediately. 18 BY MS. AUKERMAN: 19 Q. Okay. 20 A. But as something as far as this, the answer is under 21 SOR, the sole remedy to seek judicial review it it's 22 provided by SOR. If you think we did something wrong, 23 then you have a legal recourse to address it. But have 24 we received concerns if someone disagrees, yes. I 25 suppose we've received communications.</p>	<p>Page 214</p> <p>1 Q. Okay. So let's talk about another one of our clients, 2 John Doe G. He was convicted in Nebraska under the 3 Nebraska Statute 28-320.01. I'll show you that 4 statute. 5 MS. AUKERMAN: This it Exhibit 19. 6 (Plaintiffs' Exhibit No. 19 was marked.) 7 BY MS. AUKERMAN: 8 Q. Do you know offhand how long a person with that 9 offense would be required to register in Nebraska? 10 A. No. 11 Q. How would you figure out whether or not that person 12 has to register in Nebraska? 13 A. I don't. I would defer to the SOR Unit to say what 14 does Nebraska say this person has to do. And, 15 presumably, they have contacts and get that answer. 16 Q. Do you know how the SOR Unit determines whether this 17 person has to register in Nebraska? 18 A. If Nebraska is the convicting state, then I'm assuming 19 they would have officials in Nebraska who can provide 20 guidance on what they require to that individual in 21 that state. 22 Q. So looking at the language of this Nebraska statute, 23 it says, "A person commits" -- let's see. 24 "A person commits sexual assault of a 25 child in the second or third degree if he or</p>

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<p>1 she subjects another person fourteen years of 2 age or younger to sexual contact and the actor 3 is at least nineteen years of age or older."</p> <p>4 And then for Subsection (3), it's a third degree if a 5 person "does not cause serious personal injury to the 6 victim."</p> <p>7 Do you see that?</p> <p>8 A. I do.</p> <p>9 Q. Do you believe that that statute is substantially 10 similar to CSC-IV?</p> <p>11 A. Again, I don't -- I'm not in a position to offer that 12 opinion. The main question that I would ask if this 13 came to me as a request is at the time of the offense, 14 how old was the victim, how old was the offender, and 15 what did the victim (sic) do factually to the victim. 16 I would need to know that information in order to do a 17 comparison at a minimum.</p> <p>18 Q. And why do you need that information?</p> <p>19 A. Because if the -- and, again, I'm not speaking about 20 your client. I'm just saying generally this statute. 21 If sexual assault includes penetration, then I would 22 say it's not substantially similar. It can't be 23 substantially similar to a CSC-IV if the victim is 24 under the age of consent in Michigan.</p> <p>25 The question of how old the victim is would</p>	<p>1 tell us whether it needs to be substantially similar 2 to a CSC-I or a III. The relationship in age between 3 the offender and the victim would only be relevant in 4 determining if this statute is similar to a CSC-IV.</p> <p>5 So, again, it depends on the underlying 6 facts and the definitions. I would need to know how 7 Nebraska defines with assault, contact, I forget what 8 it was that it said, what the definition was. So if 9 you would have showed me a statute from Nebraska that 10 says a person in Nebraska who engaged in the act of 11 sexual penetration or intercourse, and those 12 definitions are substantially similar to Michigan, 13 with a person who -- with a victim who is less than 14 16 years of age, and we have the victim, whatever the 15 age is, say, 15. I can tell you that's a statute 16 similar to a CSC-III for Michigan.</p> <p>17 Q. So the reason that you're not able to give an answer 18 about whether these Nebraska and Ohio statutes are 19 substantially similar, is that you need to know what 20 the underlying facts are of the offense?</p> <p>21 A. As previously testified, sometimes the elements 22 themselves require a limitation of facts that enable 23 us to make a determination without any other 24 information being necessary.</p> <p>25 Sometimes where there's an overlap between</p>
<p>Page 217</p> <p>1 what may or may not be legal or regulated under a 2 Michigan statute to do the comparison, that additional 3 factual information is necessary to figure out if that 4 offense -- not the charge, not the statute. The SOR 5 uses the term offense -- if that offense is 6 substantially similar to a Michigan listed offense.</p> <p>7 Q. Okay.</p> <p>8 A. So, again, I've been pretty consistent on how I'm 9 answering this.</p> <p>10 Q. Okay. Let's move on. Let's move on.</p> <p>11 At what point is a person with an 12 out-of-state conviction notified that they're going to 13 be required to register in Michigan?</p> <p>14 A. I don't know that we're required to notify an offender 15 that they're required to register in Michigan. They 16 have the obligation to register, just like they have 17 an obligation to change the title and registration on 18 their car. The Secretary of State doesn't mail them a 19 letter, welcome to Michigan. Here's what you need to 20 do.</p> <p>21 Q. Okay. So after the SOR Unit determines what a 22 person's tier and duration level are for an 23 out-of-state offender, are they sent a notice?</p> <p>24 A. I'm not -- I don't know the answer to that question.</p> <p>25 Q. Let me show you. These are tier notifications.</p>	<p>Page 218</p> <p>1 MS. AUKERMAN: This is Exhibit 20. These 2 are tier notification letters that were provided to us 3 in discovery. 4 (Plaintiffs' Exhibit No. 20 was marked.)</p> <p>5 BY MS. AUKERMAN:</p> <p>6 Q. Do you see those?</p> <p>7 A. I do.</p> <p>8 Q. Okay. And there's one for Tier I, one for Tier II, 9 one for Tier III, and then one that allows some 10 entries around selecting the tier and selecting the 11 duration. 12 Are you familiar with these letters?</p> <p>13 A. Somewhat, yes.</p> <p>14 Q. Do you know who wrote these letters?</p> <p>15 A. I believe the SOR Unit may have developed them. I may 16 or may not have reviewed them at one point in time. I 17 don't recall. 18 But these letters are actually a good 19 indication if you go back to our earlier discussion of 20 do you check every out-of-state offender and verify, 21 dah, dah, dah, dah. Notice it says -- this doesn't 22 necessarily mean that they're getting a letter 23 upfront. This is saying the department has performed 24 an audit of your registration, meaning they've already 25 showed up in Michigan, have already gone to a local</p>

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<p>1 registering authority, have already received, 2 acknowledged, and signed their Explanation of Duties. 3 They've registered. 4 And at some point, whether it was 5 intentional of, hey, review this certain limited 6 category of offenders, or something was brought to our 7 attention that an attorney, "Hey, you got my client as 8 this. I think you need to look." Or the offender 9 himself calls up and says, "I'm concerned about my 10 registration duration." Something draws the SOR Unit 11 to look at a specific record, then I think that falls 12 under the category of an audit, and then it's like 13 this reflects whatever the result of that is. Hey, we 14 determined that you actually have a shorter duration. 15 Hey, in reviewing your records, you should be a 16 different tier. 17 This is just a reflection of going into an 18 individual record and, you know, either recording that 19 it's consistent because it's responsive to a request 20 to do so or reporting a change, whether it's requested 21 or not, because it's required by statute that that's 22 where it properly belongs. 23 Q. So is it your testimony that these letters are not 24 sent out after an out-of-state determination is made? 25 A. I don't know. I don't know where they are. It says</p>	<p>1 the department has performed an audit, so maybe it is. 2 I mean, maybe that's what they're calling an audit of 3 anyone who shows up. 4 But we're not -- it says we're doing an 5 audit of your sex offender registration, so that to me 6 suggests that they're already registered in Michigan 7 somewhere. And so if they show up on day one of their 8 registration then, you know, whether it's 15, 25, or 9 life, they're already on there. And then at some 10 point we're looking at that, whether it's right at the 11 beginning or because it's later brought to our 12 attention for some reason. And then this simply 13 reflects whatever it is that we did as it relates to 14 that specific offender. 15 Q. What I'm trying to understand, and maybe you don't 16 know the answer to this, but when the SOR Unit goes to 17 the flowchart or you assist them in making a 18 determination that the out-of-state offender has to 19 register for Tier III for life, these letters -- this 20 Tier III letter here, would that be the letter the 21 person receives? 22 A. It may be. I don't know the answer to that. But I'm 23 saying it's not limited to the initial registration. 24 These can go out anytime that they're reviewing the -- 25 any individual offender's account.</p>
<p>Page 221</p> <p>1 Q. Okay. Are there any other letters that go out to 2 out-of-state registrants when they move to Michigan 3 about what their tier and duration requirements are? 4 A. That gets into the nuts and bolts of the registration 5 side of things. So, again, this is assuming someone 6 has already registered, and they've gone over the 7 reporting duties. 8 So whenever that -- whenever they were 9 placed at the beginning, whether they're notified by 10 this letter or not, I think when they come in for 11 their next required verification, they're running 12 through what those reporting duties are at that point 13 in time. So the initial registration, I believe 14 they're informed as where they're at in the beginning. 15 But even if not, they're very next verification 16 period, whether it's going to be, you know, 17 three months, six months, or a year, all those are 18 going to be reviewed. And they're going to have to 19 acknowledge this is what your tier is at, and these 20 are your obligations. 21 MS. AUKERMAN: Let's look at Exhibit 18. 22 This is defendants' Answer. 23 (Plaintiffs' Exhibit No. 18 was marked.) 24 BY MS. AUKERMAN: 25 Q. I'm going to scroll down to -- let's see here. This</p>	<p>Page 222</p> <p>1 is a section of the Answer that relates to 2 out-of-state offenses. In paragraph 674, the 3 defendant states: 4 "Defendant states that there are two 5 different letters sent out based on whether 6 registration duration arises [sic] from a 7 foreign jurisdiction." 8 Do you see that? 9 A. I see it, yes. 10 Q. Do you know what that means? 11 A. I can't say I haven't reviewed this Answer, but I 12 don't understand the context. So if there's letters 13 that go out, I'll tell you that they don't come from 14 me. I may -- if it's a template-type letter, I may 15 have reviewed it at some point in time. 16 But if the answer of the department and the 17 SOR Unit is describing two different letters, then 18 that's the answer of the department. 19 Q. Okay. So I'm trying to understand what the two 20 different letters are 'cause we don't have two 21 different letters that were sent to us. 22 A. Yeah, I'm not aware of the source of that information. 23 Q. Okay. Does the Michigan State -- the Michigan State 24 Police does not hold any hearing prior in deciding 25 that a person must register based on a non-Michigan</p>

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<p>1 conviction, correct?</p> <p>2 A. Correct, 'cause we don't make final determinations on</p> <p>3 whether a person has an obligation to register in</p> <p>4 Michigan as an out-of-state offender.</p> <p>5 Q. Who makes that determination?</p> <p>6 A. It's the individual's responsibility to comply when</p> <p>7 they move to Michigan under federal law and a state</p> <p>8 law of their state to register in the next</p> <p>9 jurisdiction. They have the obligation to do so.</p> <p>10 Our opinion as I've testified to previously</p> <p>11 is we can, you know, read it, and say they should, and</p> <p>12 if we make a wrong determination, then I suppose</p> <p>13 that's where litigation comes in. If we make a wrong</p> <p>14 determination to remove someone who should still be</p> <p>15 required to register under the act, it doesn't stop</p> <p>16 local prosecutors from pursuing willful violations</p> <p>17 under the act. Hey, we may have took you off, but you</p> <p>18 still have an obligation to register under our reading</p> <p>19 of the statute. You've got a week to comply or our</p> <p>20 court is prosecuting you. That has nothing to do with</p> <p>21 the Michigan State Police.</p> <p>22 Q. So as the Michigan State Police, you follow the</p> <p>23 flowchart and you make a determination, Michigan State</p> <p>24 Police makes a determination that a person has to</p> <p>25 register for life as a Tier III registrant. Does --</p>	<p>1 A. We don't make that determination.</p> <p>2 Q. We talked earlier about how the flowchart that you use</p> <p>3 to determine whether or not someone has -- what the</p> <p>4 person's duration is and what tier they're in and</p> <p>5 whether they're public or not, correct?</p> <p>6 A. Correct. But we maintain a registry, and so we slot</p> <p>7 people where we think they should belong. But</p> <p>8 ultimately the obligation is -- the registry itself</p> <p>9 does not -- well, it's on the registry, so therefore</p> <p>10 we can prosecute you. No, 'cause that doesn't mean</p> <p>11 it's a willful violation of SOR. We do our best to</p> <p>12 maintain the registry. We make determinations in</p> <p>13 fulfilling our statutory responsibility. Whether the</p> <p>14 person has an obligation to register or not,</p> <p>15 ultimately is up to courts and prosecutors to decide.</p> <p>16 Q. Okay. But the MSP sent a letter saying you have to</p> <p>17 register as a Tier III registrant based on your</p> <p>18 out-of-state conviction, correct?</p> <p>19 A. Correct, which may be one of two reasons, either</p> <p>20 'cause it's substantially similar or the Tier III</p> <p>21 because the out-of-state required lifetime</p> <p>22 registration, yes.</p> <p>23 Q. Okay. And does the MSP hold any kind of hearing at</p> <p>24 which the registrant can participate before that</p> <p>25 letter is sent?</p>
<p>Page 225</p> <p>1 A. No. Under the SOR, the sole remedy for determination</p> <p>2 whether you have to register is provided for in the</p> <p>3 act. There's a --</p> <p>4 Q. And that remedy is what?</p> <p>5 A. I don't have the section, 2872 -- it's the judicial</p> <p>6 review section of the SOR that says this is the sole</p> <p>7 judicial remedy for determining your obligations under</p> <p>8 the act.</p> <p>9 Q. Okay. Are there any published rules or procedures</p> <p>10 about how a person could appeal an MSP decision</p> <p>11 regarding their out-of-state regis -- their</p> <p>12 registration obligations based on an out-of-state</p> <p>13 conviction?</p> <p>14 A. I was gonna see if Scott was gonna object but --</p> <p>15 MR. DAMICH: Objection. You can answer.</p> <p>16 THE WITNESS: -- as I said before, there's</p> <p>17 no published rules regarding SOR that have been</p> <p>18 promulgated by the department. As far as a hearing,</p> <p>19 there are multiple legal remedies as we've spent the</p> <p>20 last seven years to challenge SOR and an obligation to</p> <p>21 register. MSP is not provided -- is not one of them.</p> <p>22 BY MS. AUERMAN:</p> <p>23 Q. When you say there are multiple legal remedies, what</p> <p>24 do you mean?</p> <p>25 A. Well, there's a hearing process prescribed for under</p>	<p>Page 226</p> <p>1 the act for not limited to out-of-state offenders.</p> <p>2 There's a hearing that a registrant has a right to</p> <p>3 insist upon prior to sentencing to determine if</p> <p>4 registration is required at all at the beginning.</p> <p>5 The myriad aspect of that is after required</p> <p>6 to register, the challenge is there. Clearly,</p> <p>7 there's -- prior to the certification of the class, we</p> <p>8 were sued on multiple occasions by individual</p> <p>9 offenders challenging their registration status, as</p> <p>10 well as now the class action that is challenging</p> <p>11 various aspects of the registry applicable to specific</p> <p>12 offenders.</p> <p>13 You know, and we will conduct an individual</p> <p>14 review of a specific offender if concerns are brought</p> <p>15 to our attention either by you as the attorneys for</p> <p>16 the entire class or by the registrants themselves or</p> <p>17 others that prompt us to look at their individual</p> <p>18 record.</p> <p>19 We want to make sure we're doing the right</p> <p>20 things for the right reasons consistent with what the</p> <p>21 statute requires, what court opinions or court orders</p> <p>22 requires us to do. Or as I mentioned, I'm not aware</p> <p>23 of a formal opinion that the attorney general is</p> <p>24 applicable to any of this, but if we a had a formal</p> <p>25 opinion of the attorney general.</p>

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<p>1 Q. Okay. Let's stop for a second. You said that 2 defendants' Answer repeatedly denies that registrants 3 with out-of-state opportunities are denied the 4 opportunities to be heard. 5 As I understand in your testimony, there is 6 an opportunity to be heard? 7 A. There's no formal hearing. Someone can raise a 8 complaint and say, "Hey, I disagree with that." And I 9 think you've asked it before, do we ever receive 10 complaints from offenders questioning their rights, 11 and I acknowledge the answer is yes. I'm aware of 12 letters coming from attorneys and individual 13 registrants saying, "Hey, I don't think I have to 14 register." 15 We've gotten tons of letters coming in 16 saying I don't have to register anymore even under the 17 new act. And, you know, it's like, well, go look at 18 your attorney's website 'cause they acknowledge you 19 still have obligations under the new act. So we have 20 letters all the time. 21 Q. Right. But this -- so people could informally write 22 to the MSP and say, "Hey, I disagree with this 23 determination," correct? That's one method. 24 A. Correct. 25 Q. Right. And then who decides on that?</p>	<p>1 A. The SOR Unit would look at the letter, look at the -- 2 what they're required to do and why, and if there's no 3 issue, if they think it's -- yeah, I don't know the 4 nature of the responsive communication, but it's 5 handled at that level. If they have a question about 6 it that they need assistance on, they'll elevate it. 7 Q. It's not there's no independent decisionmaker? 8 A. I'm not aware of anything at SOR that requires an 9 independent decisionmaker of these determinations. 10 Q. It's not treated as a contested case under the APA? 11 A. I don't believe it is. 12 Q. Okay. There's no notice of appeal rights? 13 A. The notice of appeal is the section of the SOR that 14 says this is a sole judicial remedy to review your 15 obligation to register. 16 Q. And can you tell me what section you believe that to 17 be? 18 A. Can you pull up the SOR from the legislative website 19 taking me to the directory page, so I can scroll down, 20 the 28.726. 21 Q. I think you're probably talking about MCL 28.728c, I 22 believe. 23 MS. AUKERMAN: This is Exhibit 27. 24 (Plaintiffs' Exhibit No. 27 was marked.) 25 BY MS. AUKERMAN:</p>
<p>Page 229</p> <p>1 Q. Do you see that? 2 A. Yes. 3 Q. Is that the one you're speaking of? 4 A. Yes, Sub (4): 5 "This section is the sole means by which 6 an individual may obtain judicial review of 7 his or her registration requirements under the 8 [sic] act." 9 Q. Okay. And can you point me in this statute to any 10 provision that would allow an individual with an 11 out-of-state offense to contest that determination of 12 the length -- of the duration for publication 13 requirements? 14 A. Again, the legislature provided that section as "the 15 sole means by which an individual may obtain judicial 16 review of his or her registration requirements under 17 the act." 18 I'm not -- I can't point to anything in SOR 19 that says MSP has provided hearing process for -- 20 Q. That's not my question, Mr. Beatty. My question is 21 can you point to anything -- you said that this is the 22 way that people can have -- get review of whether or 23 not an out-of-state determination is correct, 24 out-of-state registration determination is correct. 25 I'm asking you where in the statute it</p>	<p>Page 230</p> <p>1 provides that you can get review over that decision? 2 A. Again, there's nothing in the statute that provides 3 for review. We are constantly trying to do things for 4 the right reason. The legislature has tasked the 5 department, whether we like it or not, of maintaining 6 a registry. So the goal is to do the right thing for 7 right reason and to carry out what the legislature has 8 directed us and required us to do. 9 So when I talk about review, that might be 10 too strong a word in terms of, you know, some type of 11 structure process that registrants can avail 12 themselves of. There's -- whatever the number is -- 13 40-some thousand registrations. We've already 14 acknowledged that we do not conduct an individual 15 review of every single record to audit every single 16 record. 17 When I say "review" is if someone thinks 18 we've done something that's inconsistent with the 19 statute, we do take that opportunity, to my knowledge, 20 to look at that record and that registrant. And if 21 we've made a mistake, my guidance would be to fix it 22 immediately. If we didn't make a mistake, then we 23 didn't make a mistake. And if someone disagrees with 24 whatever it is, wherever we land there, then the ball 25 is in their court.</p>
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<p>1 Q. So your testimony is that there is an informal process 2 by which people can contest a determination that their 3 out-of-state offense subject to registration or has 4 some kind of -- or what the tier classification is? 5 That is the review that is available?</p> <p>6 A. Again, I'm not describing it as a formal or informal 7 process. What I'm saying is if someone brings to our 8 attention, whatever you want to call it, a concern 9 over a particular registration or obligation, the SOR 10 Unit will typically look into that and then take 11 whatever appropriate action is necessary.</p> <p>12 That's not to say that we have a published, 13 "if you believe," blah, blah, blah. I think it's just 14 implied. And with anything when you deal with the 15 government, hey, I think my taxes are too high, so I'm 16 gonna write a letter to the taxing authority and say 17 my taxes are too high.</p> <p>18 Whether they have a legal right to have 19 their taxes lowered on their property, I don't know 20 the answer to that. Maybe they'll look at it and say, 21 yeah, yeah. This is outside of whatever. But maybe 22 they discovered that. Yeah, we did miss this, and it 23 takes steps to fix it. It doesn't mean that there's a 24 formal process. It's government to your response if 25 the individual requests for assistance, but it doesn't</p>	<p>1 mean it's a process. It's what government does. 2 MS. AUKERMAN: Why don't we take a 3 five-minute break. 4 (From 2:21 p.m. to 2:28 p.m., recess was 5 taken.) 6 BY MS. AUKERMAN: 7 Q. Let's switch to talking about people who are on the 8 registry for non-sex offenses. I think that you're 9 aware that under SORA people are required to register 10 as sex offenders if they're convicted of MCL 750.349 11 for kidnapping, MCL 750.349B for unlawful 12 imprisonment, and MCL 750.350 for child enticement. 13 Are you aware of that? 14 A. Yes. 15 Q. Okay. And also if they have a substantially similar 16 out-of-state offense, correct? 17 A. Yes. 18 Q. Are you aware of a Michigan Court of Appeals case 19 called People v. Lymon decided about a year ago in 20 June 2022? Yes? 21 A. Sorry. I didn't mean to talk over you. Yes, I'm 22 aware. 23 Q. And that decision held that SORA 2021 is punishment 24 and is cruel or unusual punishment that applies to 25 people convicted non-sex offenses, correct?</p>
<p>Page 233</p> <p>1 A. I don't -- the opinion speaks for itself, so whatever 2 it provides, is what it provides. 3 Q. Okay. After that opinion came down, did the Michigan 4 State Police take any steps to respond to that 5 decision? 6 A. Yes. 7 Q. And what were those steps? 8 A. I believe based on recommendations from the attorney 9 general's -- our legal counsel from the attorney 10 general's office, from our risk management perspective 11 as well, I believe that letters were sent. First, 12 identified those persons who were required to register 13 solely based on -- I think Lymon only addressed 14 specifically one conviction, but the analysis, the 15 recommendation applied to all three, and I believe 16 identified who those offenders were and identified if 17 that was the sole reason they were required to 18 register, is for one of those three offenses. 19 And the issue there, as I understand it, is, 20 one, that the statute said clearly if you're convicted 21 of the offense, you have to register. The Lymon 22 opinion said the concern was because it didn't have a 23 sexual component and each individual conviction may or 24 may not have a sexual component. The Michigan State 25 Police has the least amount of knowledge in many</p>	<p>Page 234</p> <p>1 instances to whether it actually had a sexual 2 component. 3 So for everyone of those offenders where it 4 was the sole basis of registration, notice was sent 5 to, I believe, the prosecutor, underlying prosecutor 6 for that conviction, the underlying police 7 investigating agency for that conviction, the primary 8 lead investigating agency, and the court where that 9 conviction occurred that identified the Lymon 10 decision, the concern of the Lymon decision, and 11 simply indicating that in the absence of some 12 affirmative step being taken that it fits within the 13 bounds of Lymon in that there was either a separate 14 component or perhaps required by plea, registration is 15 required as a condition of plea agreement, or some 16 other reason as identified with the letter, which that 17 if they didn't respond by a certain date, that MSP 18 would be removing those persons from the registry. 19 If we didn't receive response that satisfied 20 those concerns, those individuals were removed, and a 21 letter was sent to those registrants saying that they 22 were removed. That letter clearly indicated that that 23 is not a determination of the Michigan State Police, 24 that they don't have any obligation to register under 25 the act.</p>

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<p>1 That was us from a risk management 2 perspective saying that we're not the ones that are 3 going to be on the hook for that determination. So 4 we're removing you, but that doesn't mean they don't 5 have an obligation to register under the act of Lymon. 6 And that's one of those situations where a prosecutor 7 will reach out and say, yeah, sorry. We missed this 8 letter, but we think you do have to register because 9 of X, Y, Z. They can still go after the individual, 10 tell them they have to register, and then if they fail 11 to do so, go after them for a willful violation of the 12 statute for not doing so, even in consideration of 13 Lymon.</p> <p>14 So, yes, that was the process. We 15 identified. We reached out seeking information that 16 would support -- be consistent with Lymon to support 17 that registration. Not receiving it within a very 18 relatively short period of time clarification that we 19 would be removing that individual from the registry, 20 but that that is not a determination that the person 21 doesn't have to register. That's just where -- we're 22 not -- we're having that break, that separation, so 23 now if they register again because their individual 24 attorney said, "No, I think that" -- you clearly do 25 need to register. We're not going to stop them from</p>	<p>1 registering. Or the prosecutor reaches out and tells 2 them they have an obligation to register 'cause it 3 fits within Lymon, then they register at that point in 4 time. So that's generally the overall process.</p> <p>5 Q. Okay. Thank you. Some of the documents received talk 6 about like a Phase 1 and Phase 2 of the process. 7 Can you explain what the difference is in 8 the phases?</p> <p>9 A. I don't recall the specifics, but I think the first -- 10 whatever it was is in the order I generally described. 11 Identifying, notifying, sending notice to -- I think 12 it was the three. I think it was court, agency, and 13 prosecutor involved with that case. And then, you 14 know, setting a timeline to receive a response and 15 creating the affirmative that if we don't receive 16 information by this date that we would be removing 17 effective a certain date. Where the lines were as to 18 what phase was what, I don't recall exactly what that 19 was, but there were steps, if that's what you wanted.</p> <p>20 Q. Sure. And who was involved in sort of deciding on 21 that process and those determin- -- yeah. Who was 22 involved in deciding what that process would look 23 like?</p> <p>24 A. It would be the same internal work group that I 25 described previously, so representatives from the SOR</p>
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<p>1 Unit, myself, Mr. Gemellaro was here at the time, and 2 the attorneys from the attorney general's office I 3 previously identified, so same when we keep coming 4 back to the same table, you know, internally for these 5 discussions. There may be a new face here or there or 6 someone on one but not the other. But as a general, 7 that's kind of the core of that internal ad hoc.</p> <p>8 Q. And MSP did not seek to identify individuals with 9 substantially similar out-of-state offenses for those 10 non-sex offenses, correct?</p> <p>11 A. Well, depending. If they were registered, if there 12 was a substantially similar comparison, that could be 13 one of those situations. I don't remember specific 14 offenders, but that theoretically could be if we 15 didn't have the document, then it may not make a 16 difference to the offender. He may be removed from a 17 substantially similar requirement to register but is 18 still required to register by the other state, then 19 Lymon means nothing. And that's because they're 20 required to register in the other state.</p> <p>21 That opinion is not binding on the other 22 state. In order to give full faith and credit to that 23 other state's laws and avoid Michigan being a 24 sanctuary for those Lymon-type offenders to commit 25 those offenses in other states and come here and avoid</p>	<p>1 the responsibilities in their convicting state, they 2 still have a continued obligation to register. It 3 just wouldn't be for substantially similar, unless you 4 could establish the sexual component.</p> <p>5 Q. So let me try and understand this correctly. 6 So the MSP's position with respect to people 7 convicted of non-sex offenses in other states who are 8 registered in Michigan is that assuming they have to 9 register in their own state, Lymon is inapplicable?</p> <p>10 A. Right. I think earlier in this deposition I believe 11 you read from the section. It talks about the 12 substantially similar, and I don't have the language 13 right in front of me. But it talks about a child sex 14 offender or of other offense requirements, like it had 15 this broad category of other offense statutes that 16 would be substantially similar and required 17 registration in Michigan.</p> <p>18 So if the other state, the convicting state, 19 requires registration -- which I believe that 20 registration is also consistent with federal SORNA, 21 but if the other state requires registration, Lymon 22 didn't change that obligation.</p> <p>23 Q. So you're reading of Lymon or your work group's 24 reading of Lymon is that it's cruel or unusual 25 punishment to require someone with a Michigan</p>

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<p>1 kidnapping, conviction to register as a sex offender, 2 but it's not cruel or unusual punishment to require 3 someone with a Ohio connecting conviction? 4 A. I didn't use any of those terms, cruel and unusual 5 punishment, nor as far as the group, did I give 6 specific testimony as to our analysis or thought 7 process which I believe to be deliberative and 8 privileged. 9 I think the process I described was the 10 result of that work group which was the phase approach 11 and what we were doing. You know, I have opinions -- 12 Q. Just to be clear, you did not remove people -- you've 13 not identified or removed people who have 14 substantially similar out-of-state non-sex 15 convictions? 16 A. That's compound -- 17 MR. DAMICH: Objection. 18 THE WITNESS: -- "identify and remove." If 19 the sole basis that shows up in SOR is 20 substantially -- is that it's an out-of-state 21 conviction, and the system identified the 22 substantially similar conviction as being one of those 23 three, I would venture to guess I'm pretty sure that 24 it was identified. Then it would have been looked at 25 to say, do we have the information or is there</p>	<p>1 sufficient information that would comply with Lymon to 2 continue with required registration if substantially 3 similar. If not, then, like an in-state, same 4 consideration. 5 The most risk averse approach, not making 6 the determination whether they have to register or not 7 register -- the most risk averse approach for the 8 department because we keep getting hit with these 9 lawsuits because the legislature tagged us with 10 maintaining a registry that we don't even need for a 11 law enforcement purpose. The -- because all this 12 information is already available to us. The -- you 13 know, then it's not substantially similar that they're 14 required to register, it would be because their other 15 state requires registration. 16 BY MS. AUKERMAN: 17 Q. Okay. I just want to be clear because the SOR Unit 18 staff testified that there was not an effort to 19 identify out-of-state substantially similar non-sex 20 offense folks. 21 Is it your understanding that there was an 22 effort to identify them, or do you not know? 23 MR. DAMICH: Objection. Speculation. 24 THE WITNESS: If the out-of-state -- 25 regardless of what you want to call the offense, if</p>
<p>Page 241</p> <p>1 the person is required to register because of an 2 out-of-state registration, we've already established 3 what that other state's registration requirements is, 4 you know, if it's a lifetime registration. 5 For example, in the state of Florida, 6 regardless of what the conviction is, we don't need to 7 look at whether it's substantially similar or not 8 substantially similar, or if Lymon requires it or 9 doesn't require it or any of that comparison because 10 regardless of that answer, they're still required to 11 register in Michigan because their other state, the 12 state of conviction requires that registration. 13 So, yeah, I can see where maybe they need to 14 look at that because the answer didn't change 15 anything. If it was a situation where -- and I don't 16 even know why this situation would exist. But if it 17 was a situation where the out-of-state didn't require 18 registration and the only reason they're required to 19 register is because it's substantially similar to one 20 of the three identified Lymon defense, then I would 21 venture to guess that was looked at in same way, 22 shape, or form. Whether that occurred or not or 23 whether if there's anyone that fits that scenario, I 24 have no idea. 25 BY MS. AUKERMAN:</p>	<p>Page 242</p> <p>1 Q. Okay. In deciding -- if the prosecutor said, you 2 know, this person -- there was a sexual component, 3 then the person was not removed from the registry, 4 correct? 5 A. Correct. 6 Q. There was no requirement for a judicial determination 7 about whether or not there's a sexual component to the 8 offense, correct? 9 A. Again, we put the burden of the people have the most 10 access to information to advise whether or not this 11 registration is proper under Lymon. If that 12 registration occurred in court before sentencing, it 13 had nothing to do with the Michigan State Police, so 14 the determination of whether or not someone continues 15 to meet that obligation is required to in light of 16 Lymon should go back to those same individuals. So, 17 no, we've never -- 18 Q. But the same individuals would be the court process, 19 right? 20 It would be the judge, not the prosecution? 21 A. You'd have to ask them as far as the process. We gave 22 an opportunity to say is this person properly 23 registered in light of Lymon, and if they said yes, 24 we're just doing our registry. Then we're basing it 25 on that decision as being made. That decision was not</p>

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<p>1 made by Michigan State Police. If they didn't get 2 back to us, we remove because they didn't give us the 3 information. But we're not gonna second guess 4 individual decisions or analysis or local prosecutors 5 that registration is or is not required. They're 6 ultimately the ones who would have to prove a willful 7 violation, not MSP.</p> <p>8 Q. The letters that went out, who wrote those?</p> <p>9 A. Again, I think it was a consensus of internal drafts 10 amongst the work group, ad hoc work group that I 11 talked about before. So whatever the final letter of 12 the department, speaking on behalf of the department, 13 is the department's letter.</p> <p>14 MS. AUKERMAN: I'm just going to note for 15 the record, and, Scott, if you can get this to us, the 16 copies we have are still not the final copies. They 17 don't have signatures. They don't have letterhead. 18 They don't have dates. So we need, obviously, those.</p> <p>19 MR. DAMICH: Sure. If you'd like, you can 20 follow up with email after this of things we need to 21 provide you.</p> <p>22 MS. AUKERMAN: Yup, okay.</p> <p>23 BY MS. AUKERMAN:</p> <p>24 Q. So let me show you -- here's one of these letters.</p> <p>25 MS. AUKERMAN: Make this Exhibit 21.</p>	<p>1 (Plaintiffs' Exhibit No. 21 was marked.) 2 BY MS. AUKERMAN: 3 Q. Can you see that? 4 A. Yeah. That looks like an early draft of a letter that 5 was shared in its response to the discovery because 6 it was probably a broad request for all letter, et 7 cetera, et cetera.</p> <p>8 That, I don't believe would be the letter 9 that went out. I believe that to be a draft which 10 would probably fall under the deliberative process 11 objections that Mr. Damich cited earlier. But as far 12 as the final letters that went out, I agree you should 13 have those if you don't have them already. I would 14 think you should have those. Those would be the 15 letters that were, you know, approved by the 16 department to go out.</p> <p>17 Q. Okay.</p> <p>18 A. It would be a draft. It may be the exact same. I 19 don't know, but this appears to be a draft.</p> <p>20 MS. AUKERMAN: Okay. So I'm going to, 21 again, state for the record that we may have to reopen 22 the 30(b)(6) deposition if we weren't provided with 23 the final drafts. We have requested repeatedly for 24 final drafts of these letters and haven't gotten them. 25 So I'm just going to state that for the record.</p>
<p>Page 245</p> <p>1 I think at this point, we have to go forward 2 with these drafts because I don't have any other 3 documents to work off of.</p> <p>4 THE WITNESS: And these may be the same as 5 actually went out. It's just I'm not -- this doesn't 6 look like something that would actually be mailed out.</p> <p>7 BY MS. AUKERMAN:</p> <p>8 Q. Correct.</p> <p>9 A. To the extent this is the exact same text, it may be 10 the same as what went out, but go ahead with your 11 question.</p> <p>12 Q. Okay. So this letter to PAAM, what was the purpose of 13 this letter?</p> <p>14 A. It was to tell them that based on a Michigan Court of 15 Appeals decision of People versus Lymon and advice 16 from the Department of Attorney General, the Sex 17 Offender Registry will remove the rights, giving them 18 notice of what we're doing and why we're doing it.</p> <p>19 Q. Do you know when it went out, roughly? It's not 20 dated.</p> <p>21 A. This would have been one of earlier -- if we're 22 talking phases, I'm not sure which phase, but this 23 would have been in the front end. And I believe it 24 was last fall, but I'm not positive of the date.</p> <p>25 Q. Okay. And it says here in the second paragraph, and</p>	<p>Page 246</p> <p>1 this is what you were alluding to earlier: 2 "Removing an individual from the 3 registry due to Lymon is not a determination 4 that they are not required to register. 5 Whether someone still has registration 6 obligations under the SORA depends on the 7 specific facts underlying the case - whether 8 there was a sexual component to the crime, as 9 explained in Lymon." 10 Correct? 11 A. That's what it says, yes. And that's consistent with 12 what I was describing earlier. 13 Q. So the MSP interprets Lymon to mean that it is the 14 underlying offense conduct not the elements of the 15 offense of conviction that determine a person's 16 registration obligation? 17 A. Again, assuming this is consistent with the final 18 letter that went out, it's MSP's thought whatever that 19 letter says. That those individuals required to 20 register solely for unlawful imprisonment, kidnapping, 21 or child enticement will be removed in approximately 22 90 days unless they provide information, you know, 23 that would be consistent with Lymon to require 24 continued registration. 25 The fact that we from our risk averse</p>

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<p>1 approach removed individuals were asked for and were 2 not provided information that would allow us to ensure 3 our members are acting consistent with Lymon, we're 4 going to remove. But consistent with what I said from 5 the beginning, MSP does not make the determination 6 that a person has to register or not register. Our 7 opinion is really irrelevant. And since we no longer 8 have technical violations of SOR, registrants, 9 individual registrants, are protected because it would 10 be the burden of the prosecutor to prove beyond a 11 reasonable doubt a willful violation. And we put that 12 burden back where it belongs on prosecutors that if 13 they think this person has to register, then you tell 14 us they do, and then you take whatever steps you think 15 is appropriate from an enforcement standpoint.</p> <p>16 Q. Okay. So in the third paragraph, it says: 17 "Whether the individual should register 18 in light of the Lymon opinion or other 19 extenuating circumstances is left to those 20 with the most relevant information related to 21 conviction."</p> <p>22 What are "other extenuating circumstances"?</p> <p>23 A. Well, as a former prosecutor and as a defense 24 attorney, as you may be aware, I can tell you that I 25 had numerous clients as a defense attorney where the</p>	<p>1 primary focus is how do I avoid registration or how do 2 I limit my registration obligation. So a tremendous 3 amount of effort comes in to coming up with a plea 4 that either limits or eliminates an obligation to 5 register, unless it's a clear-cut CSC-I minor child. 6 But for these other ones, that's a material part of 7 the negotiations.</p> <p>8 Crime victims in Michigan have a 9 constitutional right to be involved in any plea 10 negotiation. So you could have a situation where it 11 would clearly be a registrable offense, that there was 12 a conduct the person did would fall clearly outside of 13 Lymon. But the victim agreed to a plea to kidnapping, 14 child enticement, or unlawful imprisonment because to 15 the offender it sounds better. It doesn't look as bad 16 when it shows up on the registry, and the victim is 17 satisfied. Well, just as long as the person is 18 required to register, I'm happy for the guidelines 19 either way or no prison. Then you've impacted the 20 victim's constitutional rights which are memorialized 21 in our constitution. And if it was a part of a plea, 22 to me, the answer is if you only pled to this because 23 of the expectation of everybody involved, including 24 the registrant and their attorney, or an obligation to 25 register. If that obligation no longer exists, then</p>
<p>Page 249</p> <p>1 that is a material breach of the plea agreement in 2 violation of the victim's constitutional rights. 3 So the remedy when you have those situations 4 is to set aside the plea and go back to the original 5 charges in my opinion. So there may be extenuating 6 circumstances that, yes, the person was convicted of 7 child enticement, but there may be other things the 8 prosecutor is gonna do to address and make sure 9 they're protecting the constitutional rights of the 10 victim.</p> <p>11 Q. So when you say that Michigan State Police recognizes 12 that registration could have been a condition of the 13 plea, the concern that you're expressing there is that 14 the prosecutor, defense attorney, you know, in 15 consultation with the victim may have decided hey, 16 this plea agreement is contingent on, you know, 17 registration at Tier III or registration at Tier II, 18 and, therefore, we're not gonna now go back and take 19 this person off the registry?</p> <p>20 A. Well, I'm not saying we're not going to just go ahead 21 and take the person off the registry. We reached out 22 to prosecutors and said if you think -- this is the 23 conviction. It is what it is. If there's a basis you 24 believe the person should still be required to 25 register, please tell us, and we put the burden back</p>	<p>Page 250</p> <p>1 on them.</p> <p>2 Q. My question is really about the plea itself. The 3 concern that you're expressing is that the plea is 4 like a contract. It's a bargain, and it has to be 5 respected. Is that the idea?</p> <p>6 A. Well, as well as the fact that -- I know you're 7 representing diligently the constitutional rights of 8 your clients. Crime victims have a constitution right 9 as well to be informed and involved in the plea 10 process. They don't have the final say.</p> <p>11 But I can tell you as a prosecutor, 12 especially with young child victims, that there were 13 many times that where the plea agreement was to a much 14 lesser offense, and the conversation I had with 15 prosecutors constitutionally about their rights were, 16 yes. They may not be going to prison on the CSC-III 17 or CSC-I, but we're getting a conviction for a CSC-IV 18 or an accosting or something else. We can get a plea 19 to this, and at least we know the person is going to 20 be required to register for X period of time.</p> <p>21 And the parents or the victim, or the 22 victim's advocate on their behalf, may say, well, 23 listen, you know, to avoid putting my five-year-old on 24 the stand, as long as I know this person is 25 registered, you know, I'm okay with this plea. If you</p>

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<p>1 rip that out from the victim after the fact, you know, 2 then it's the victim's constitutional rights that are 3 implicated.</p> <p>4 I'm waiting for the next class action that 5 comes on behalf of victims for the violation of their 6 rights when things are being done which required 7 registration obligations that didn't account for them. 8 The hearing process in SOR accounts for victim's 9 rights, either at the front end prior to sentencing or 10 requires the prosecutor to notify the victim in any 11 judicial review of the obligation. When things happen 12 outside of that process, it serves to deprive the 13 victims of their constitutional right and just 14 generally out of concern for them.</p> <p>15 Q. So the registry -- basically, what you're saying is 16 that the registration obligation is part of a 17 negotiated deal to resolve the case?</p> <p>18 A. Yeah. That may be a condition to say for the 19 prosecutor to get back with them and say this person 20 should not be off the registry because there's more to 21 this than just the Lymon. Okay. Then we'll leave him 22 on until someone -- a court tells us differently.</p> <p>23 Q. Let's look at -- this is Exhibit 22. This is the 24 prosecutor letter. Again, it's undated, unsigned.</p> <p>25 MS. AUKERMAN: Mark this Exhibit 22.</p>	<p>1 (Plaintiffs' Exhibit No. 22 was marked.) 2 BY MS. AUKERMAN: 3 Q. Do you recognize this document? I realize this may 4 also be a draft. 5 A. It hasn't popped up, so I'm waiting. 6 Q. Oh, I'm sorry. I apologize. Do you see that? 7 A. Yes. 8 Q. Okay. And it looks like each letter here was 9 accompanied by information about registrants who were 10 convicted in that jurisdiction for a non-sex offense, 11 correct? 12 A. Correct. 13 Q. Do you know what information was provided about each 14 registrant to the prosecutors? 15 A. I think just name and conviction information 'cause 16 that's the information that's in the registry. As the 17 convicting prosecutor, they would obviously have way 18 more information about the case than us. 19 And as I see, this letter, we talked about 20 phases. I'm not sure where things landed. The first 21 letter to PAAM, as I recall, was that, hey, heads up, 22 prosecutors. There's a letter that you're going to be 23 getting, that you may be getting. This letter is more 24 specific, and it went by county, the county 25 prosecutor, identified those Lymon offenses whatever</p>
<p>Page 253</p> <p>1 that number is. Then it was further broken down by 2 county, and then each county prosecutor that had one 3 of those convictions got this letter. 4 So I'm not sure where the breakdown was, but 5 if there was a county that didn't have any Lymon 6 offenders registered solely based on one of the three 7 Lymon offenses or as solely based on being 8 substantially similar to a Lymon offense, then they 9 wouldn't have gotten this letter. This was now a more 10 specific letter that identified the offenders that 11 came through their jurisdiction, required to register 12 solely based on that case, that Lymon case. 13 Q. Okay. 14 A. And then, I see at the bottom. When I said copies 15 went to the law enforcement agency, so, again, I know 16 this isn't the final form, but the plan was to CC 17 whether it was the local Michigan State Police post or 18 sheriff's department or township PD, whoever was the 19 investigating agency would have gotten a copy of that 20 letter. They would have gotten, you know, the name, 21 the complaint number or the case number, for them to, 22 you know, throw in their two cents if they had a 23 concern. And I believe it also included a -- well, 24 here's one of the police as well, but I think courts 25 got one as well.</p>	<p>Page 254</p> <p>1 Q. Right. So I'm just marking this Exhibit 23. 2 (Plaintiffs' Exhibit No. 23 was marked.) 3 BY MS. AUKERMAN: 4 Q. This is the letter to police, and it indicates that: 5 "As your agency and the local 6 prosecutor's office has the necessary 7 case-specific information, whether the 8 individual should register in light of the 9 Lymon opinion or other extenuating 10 circumstances is left up [sic] to the local 11 prosecutor. You are being contacted so that 12 you can work with the prosecutor in making 13 that determination as you feel necessary. We 14 ask that you assess these cases and contact 15 the prosecutor in cases where the individual 16 will continue to register." 17 So the local law enforcement was asked to work with 18 the prosecutors to sort of figure out which of these 19 folks they thought should stay on the registry? 20 A. Again, we have no supervisory authority over local 21 police or prosecutors, but it was a suggestion that -- 22 the only thing we were certain about is if we didn't 23 hear anything, we were removing this category of 24 offenders as the most risk averse approach, without 25 taking an opinion as to whether if a person actually</p>

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<p>1 has to register under Lymon or not. 2 So that's merely a suggestion, not a 3 mandate. We don't have any supervisory authority to 4 require them to do any of this stuff. We just made it 5 clear that if we didn't hear from them and we didn't 6 get the information that was responsive to the 7 request, that we would remove by a date certain. 8 That's the essence of the letter. 9 Q. Okay. So now let's look at Exhibit 24. This is it 10 the letter to the registrants themselves. 11 (Plaintiffs' Exhibit No. 24 was marked.) 12 BY MS. AUKERMAN: 13 Q. Do you know roughly when this letter went out? 14 A. Again, I would defer to the three that I believe have 15 a copy of that. 16 Q. Do you know if they all went out at the same time or 17 if it was staggered? 18 A. That, I don't know. Just, logically and knowing 19 the burden that's placed on them, there may be some 20 staggering. 21 Q. Okay. And then we talked about this language in 22 paragraph 4. 23 "This is not a determination that you no 24 longer need to register, verify, or update 25 your information as required by Michigan law,</p>	<p>1 federal law, or another state's law." 2 So how is a person who gets this letter supposed to 3 know whether they have to register? 4 A. So, again, any person got this letter is currently 5 represented by legal counsel, so they can certainly -- 6 as contact, as indicated at the bottom, "you may 7 contact the ACLU with questions," so they can 8 certainly reach out to their own attorneys if they 9 have questions. 10 But it does highlight the second paragraph, 11 so assuming they were found competent enough to stand 12 trial or plead guilty to a conviction, that they could 13 either understand or have the assistance of 14 understanding whether or not their offense for 15 kidnapping, you know, had some sexual component or 16 something along those lines. 17 So I don't think you have to be a, you know, 18 overly, you know, even book smart. If you know you 19 perp'd on a child and the end result of that plea was 20 child enticement, kidnapping, or unlawful 21 imprisonment, then I think it's pretty clear you 22 probably still have an obligation to register. And 23 I'm not -- there might be people who I think even 24 reached out, offenders, to the SOR Unit and said, no. 25 I don't want to stop registering because I think I fit</p>
<p style="text-align: center;">Page 257</p> <p>1 into this category. You'd have to defer to the SOR 2 Unit. 3 But there's some people who know exactly 4 what they did regardless of what the final conviction 5 was who may have talked to an attorney or not and 6 said, no, no, no. Put me back. Like, I want my 7 registration to stay current because I know my offense 8 had a sexual component regardless of what that 9 condition is. So I don't think it's -- 10 Q. I mean, wouldn't there be -- let me state this a 11 different way. 12 You're saying that it is up to the 13 prosecutor to determine whether there's a sexual 14 component so that the person would need to register 15 irrespective of Lymon, correct? 16 A. I mean, technically. I believe it's up to the 17 registrant under SOR if there's a person who has an 18 obligation to register, right. Ignorance of the law 19 is not a defense of the law. 20 So that encompasses as it does with anything 21 else case law that limits the application of law. So 22 individuals can make their own assessment as to 23 whether or not they have to do something to comply 24 with the law, and so -- 25 Q. Are you saying that the individual getting this letter</p>	<p style="text-align: center;">Page 258</p> <p>1 would need to determine whether they think they have 2 to register? 3 MR. DAMICH: Objection -- 4 THE WITNESS: All this is saying is -- 5 'cause, remember, this letter went out after the 6 prosecutor has made -- didn't provide any information 7 that would -- that they were satisfied that it was 8 consistent with Lymon. So this letter came out timing 9 wise afterwards. 10 All this letter is saying is we're removing 11 you because we didn't receive the information there, 12 but that doesn't mean you don't have an obligation to 13 register nor does it mean that you can't be prosecuted 14 for a violation. 15 It's entirely consistent with the language 16 that you put on your website regarding the impact of 17 the new statute on your clients. It's we're not 18 making the determination that you don't have to 19 comply. You may very well have to, and I believe 20 there's a number of these offenders who understood 21 quite clearly that their offense for kidnapping, child 22 enticement, or unlawful imprisonment had a sexual 23 component, and they're -- 24 BY MS. AUKERMAN: 25 Q. If a person is unsure whether they have to register</p>

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<p>1 after Lymon, what are they supposed to do?</p> <p>2 A. Well, they can do nothing because we removed them, so</p> <p>3 I think it would play out. It would be hard pressed</p> <p>4 for a prosecutor to prosecute as a willful violation</p> <p>5 an offender who doesn't register in light of Lymon who</p> <p>6 the department has removed because the prosecutor</p> <p>7 didn't provide the information and because, you know,</p> <p>8 we made the choice to remove them. I'm not sure how</p> <p>9 you could establish a willful violation without the</p> <p>10 prosecutor or some other appropriate authority</p> <p>11 reaching out to say, "Hey, sorry. We allowed you to</p> <p>12 be removed and sorry for the headache."</p> <p>13 But you do have an obligation. This query</p> <p>14 does have a sexual component. My hunch is that it</p> <p>15 will be probably because the victim is now complaining</p> <p>16 about why the person is no longer on the registry when</p> <p>17 they know perfectly well that their child was</p> <p>18 victimized in a sexual manner and that was --</p> <p>19 Q. Okay. Let me stop you. Looking at paragraph 3,</p> <p>20 second sentence, it says:</p> <p>21 "The Michigan State Police does not have</p> <p>22 the authority to make factual determinations</p> <p>23 that are necessary to evaluate whether you</p> <p>24 still have registration obligations in light</p> <p>25 of the Lymon opinion. Until that</p>	<p>1 determination is made, you are being removed</p> <p>2 from the registry."</p> <p>3 Now, in some cases, the prosecutors got back to them</p> <p>4 as being correct and said, look, there's no sexual</p> <p>5 component to this offense, correct?</p> <p>6 A. Well, I don't believe we got letters back. I may be</p> <p>7 wrong, but the letters -- we didn't ask for them to</p> <p>8 contact us to say that Lymon applied. The letter was</p> <p>9 written from the standpoint of if they didn't think</p> <p>10 Lymon applied, they didn't have to take any further</p> <p>11 action whatsoever. The person was gonna be removed.</p> <p>12 So I'm not sure. It's hard enough to get people to do</p> <p>13 something when we're asking for it. They could do</p> <p>14 nothing and end up in the same place. If they agree</p> <p>15 that Lymon doesn't require registration, then I don't</p> <p>16 think we got letters back saying, yeah, go ahead and</p> <p>17 remove.</p> <p>18 It was -- it's specifically seeking those</p> <p>19 offenders where we think that Lymon doesn't require</p> <p>20 removal, that the person has a continuing obligation.</p> <p>21 Those are the letters we were looking for, and that's</p> <p>22 what we needed to make the determination to simply</p> <p>23 keep the person on the registry at that point until we</p> <p>24 get, I guess, a court order to the contrary or a</p> <p>25 specific statute that requires to do something</p>
<p>Page 261</p> <p>1 different as to that offender.</p> <p>2 Q. Okay. Let's look -- we'll go back to that, actually.</p> <p>3 On this registered letter, bottom of</p> <p>4 paragraph 4, it says that the registrant should review</p> <p>5 MCL 28.728c and consult with an attorney if you</p> <p>6 believe you're no longer required to register,</p> <p>7 correct?</p> <p>8 A. That's what it says, yes.</p> <p>9 Q. And we looked previously -- actually, yeah. We looked</p> <p>10 previously at MCL 28.728c. Let's see. That was</p> <p>11 exhibit -- this is, again, MCL 28.728c.</p> <p>12 Can you point me to any provision in this</p> <p>13 document that would allow a person to seek judicial</p> <p>14 removal based on Lymon?</p> <p>15 A. It doesn't. It's a recognition that the statute says,</p> <p>16 "This section is the sole means by which an individual</p> <p>17 may obtain judicial review of his or her registration</p> <p>18 requirements..."</p> <p>19 So, theoretically, you could have a Lymon</p> <p>20 opinion that still would arguably have a sexual</p> <p>21 component, for example, but if in a -- you know, if it</p> <p>22 fits one of those situations, the underlying situation</p> <p>23 is -- I'd have to go through it but...</p> <p>24 Q. Okay.</p> <p>25 A. And the end of that letter, again, reiterated, please</p>	<p>Page 262</p> <p>1 contact your private attorney for specific legal</p> <p>2 advice. That would be the ACLU, and here's the case</p> <p>3 number in which you're being represented.</p> <p>4 Q. All right. Actually, let's move on.</p> <p>5 If Lymon is reversed, are you aware that the</p> <p>6 Michigan State Supreme Court has granted leave in</p> <p>7 Lymon?</p> <p>8 A. I am.</p> <p>9 Q. Has the Michigan State Police taken a position in</p> <p>10 Lymon?</p> <p>11 A. I believe there is, or there might be an amicus filed</p> <p>12 in that. So as far as whatever position is or isn't</p> <p>13 taken, I mean, would be reflected in that amicus</p> <p>14 brief.</p> <p>15 Q. Do you know what that position is?</p> <p>16 A. Again, I'm not sure if it's been filed yet or not, or</p> <p>17 if it's going -- I think there's an amicus. I'm not</p> <p>18 positive. So if there's an amicus filed on behalf of</p> <p>19 the state police, then I'm comfortable saying that</p> <p>20 would be our position.</p> <p>21 Q. Were you involved or are you involved in decisions</p> <p>22 around what that position would be?</p> <p>23 A. I can. Like I said, that internal work group that</p> <p>24 often involves these several attorneys from the</p> <p>25 attorney general's office, myself, Mr. Gemellaro was</p>
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<p>1 here, and as needed, representatives from the SOR 2 Unit, as well as risk management from that side of 3 things, and any one of us can be involved in those 4 types of questions.</p> <p>5 Q. If the Michigan Supreme Court says that registration 6 of people with non-sex offenses is permissible, what 7 would the Michigan State Police do then?</p> <p>8 MR. DAMICH: Objection. Speculation.</p> <p>9 THE WITNESS: I don't know that we have to 10 do anything unless the court directs us to provide 11 some type of notice. As the letter they got from us 12 if they were removed, it said this is not a 13 determination you no longer have to register. It is 14 their obligation to register, and failure to do so is 15 a willful violation. It's a willful violation of the 16 statute. I would hope their attorneys would contact 17 them 'cause we specifically identified who these 18 several hundred offenders are -- use their client 19 database tools to reach out directly to their clients 20 and say heads up, the Supreme Court did something 21 different regardless of whether there's a sexual 22 component, you now have to register. And I would hope 23 they would encourage them to comply with the law.</p> <p>24 BY MS. AUKERMAN:</p> <p>25 Q. So if the Michigan Supreme Court says it's permissible</p>	<p>1 for people to be registered as sex offenders for 2 non-sex offenses, those individuals could be required 3 to register again?</p> <p>4 A. Well, I don't profess to speak for the Michigan 5 Supreme Court, but I don't think they would say that 6 it's permissible. It would say it's required under 7 SOR. And the willful failure to comply with an act 8 that has criminal penalties goes back to the person 9 who has the responsibility to comply with that act.</p> <p>10 I don't know that the MSP has any obligation 11 to advise people, you know, hey, speed limit on this 12 stretch of road came up. You frequently travel this, 13 so here's a letter saying that you should be aware of 14 your speed. That's not the responsibility of the 15 Michigan State Police. They have attorneys actively 16 litigating that Lymon case specifically identifying 17 those offenders who are identified as Lymon-only 18 offenders. I would hope that they would get ahold of 19 those clients before the prosecutor gets ahold of them 20 for a willful violation.</p> <p>21 Q. But it's fair to say that their removal is temporary 22 pending what happens in the Michigan Supreme Court?</p> <p>23 MR. DAMICH: Objection. Ambiguous. Speculative.</p> <p>24 THE WITNESS: Yeah, I don't know whether</p>
<p>Page 265</p> <p>1 it's fair to say it's temporary or not. The fact of 2 the matter is in a risk averse approach, we've removed 3 those registrants who were not -- remember, I'm 4 concerned about our members doing the right thing, 5 right. So if we're on notice that there's a category 6 of offenders who can only be required to register and 7 we start the Court of Appeals decision under a certain 8 condition. If we're not satisfied those conditions 9 exist and we do our due diligence to reach out to 10 those who have the information to be able to make that 11 determination, and they don't get back with us, we're 12 simply removing our liability. That's not making an 13 opinion or a decision that it's right or wrong, 14 correct, or whatever. It's we're removing our 15 liability and forcing someone else to make an 16 individual affirmative step outside of MSP to put that 17 registrant back on. And once that registrant is back 18 on, we're going to maintain the registry.</p> <p>19 BY MS. AUKERMAN:</p> <p>20 Q. Do you know how many registrants with non-sex offenses 21 have been removed pending a decision by the Michigan 22 Supreme Court to Lymon?</p> <p>23 MR. DAMICH: Objection. Lack of foundation.</p> <p>24 THE WITNESS: Well, again, when you say 25 non-sex offenses, are you referring to the Lymon</p>	<p>Page 266</p> <p>1 category of offenses?</p> <p>2 BY MS. AUKERMAN:</p> <p>3 Q. Yes.</p> <p>4 A. Okay. I don't know the exact numbers on that. And I 5 disagree with the characterization that they're 6 non-sex offenses. Those offenses can very well be 7 sexual offenses depending on the underlying facts.</p> <p>8 Q. So let's look at Exhibit 28. (Plaintiffs' Exhibit No. 28 was marked.)</p> <p>9 BY MS. AUKERMAN:</p> <p>10 Q. Okay. Do you see that?</p> <p>11 A. I do. I've just gotta get my glasses here again.</p> <p>12 Q. Let's see if I can make it a little larger.</p> <p>13 A. I can see it now with my glasses. I'm good. Don't 14 worry about it.</p> <p>15 Q. So this is the chart that was provided to us in 16 discovery of -- do you recognize this chart?</p> <p>17 A. No. I don't recall ever seeing it.</p> <p>18 Q. Okay. This is Exhibit 28. I believe it's called 19 follow-up for prosecutors chart. It appears to be a 20 chart that was used by the SOR Unit to track responses 21 from prosecutors for the Lymon case.</p> <p>22 A. Seems reasonable.</p> <p>23 Q. Okay. There are two tabs, and it's not letting me 24 show those. Oh, here you go.</p>

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<p>1 There's one tab here that's Prosecutor and 2 Court, and then there's a second tab that's Arresting 3 Agencies. Do you see those? 4 A. I do. 5 Q. And do you see on the Prosecutor and Court tab in 6 column I it says "Canceled per PA." That appears to 7 mean that the prosecutor has determined that the case 8 has no sexual component and the person should be 9 removed from the registry. Is that -- 10 MR. DAMICH: Objection. 11 THE WITNESS: I don't recall seeing that 12 document. If you're asking me to guess, that would 13 make sense to me. But I don't know definitely what 14 yes means in response to that. 15 BY MS. AUKERMAN: 16 Q. Okay. Do you know who would know? 17 A. I'm assuming it says created and produced by the SOR 18 Unit, so whoever testified for them. 19 Q. Okay. I get 17 cases where they were canceled by the 20 prosecutor saying there's no sexual compliance. 21 Do you see that? 22 A. Then I misspoke when I said earlier that, you know, 23 prosecutors, you know, don't have to tell us that they 24 don't belong in the registry. So kudos to those 25 prosecutors that reached out to confirm that it is not</p>	<p>1 a sexual component. I believe they're -- I appreciate 2 them taking the act to review it and confirming that 3 the removal is appropriate. 4 Q. Okay. 5 A. That's helpful to us. 6 Q. Yeah. And then I see in Column J it says, "Do not 7 remove per PA." 8 So that appears to be a column that shows 9 cases where the prosecutor determined that the 10 individual should not be removed, correct? 11 A. Again, that seems like a reasonable conclusion, but I 12 would defer to whoever created and entered that 13 information. 14 Q. Fair. I understand that you didn't -- weren't 15 previously familiar with this document. We're just 16 trying to make sure we understand it correctly. 17 So it looks like I get 14 cases where the 18 prosecutor said do not remove this person. Do you see 19 that? 20 A. I've not counted, but whatever the record reflects 21 under that column is consists with whatever you're 22 attempting to characterize. 23 Q. And then we see on Column K that seems to be the 24 majority of the cases. I counted 135 cases that show 25 no response from the prosecutor.</p>
<p>Page 269</p> <p>1 I realize you haven't counted, but do you 2 see what I'm referring there? 3 A. Right. And that's what I think the way the letters 4 were designed was, again, to put the affirmative 5 responsibility back on individual prosecuting 6 attorneys, courts, and investigating agencies to, you 7 know, assist in making whatever determination is 8 appropriate. 9 Q. Okay. 10 A. I see that list, and I see -- maybe those persons fit 11 within Lymon, maybe they don't, but MSP is out of 12 that. At this point in time, we removed, but that's 13 not making the determination whether they should be 14 removed or not. It's just removing the risk or the 15 assignment of risk to the department because we are 16 tasked with the legislative responsibility of 17 maintaining a registry. 18 Q. Let's switch gears a little bit. I want to talk about 19 the contract for the SOR Unit database. Let me show 20 that again. That was Exhibit 3. 21 And I believe you said earlier that you had 22 some responsibility for contracts involving the 23 Michigan State Police? 24 A. I do. 25 Q. Are you familiar -- so this is Exhibit 3. It's,</p>	<p>Page 270</p> <p>1 again, the Department of Technology, Management, and 2 Budget contract with LexisNexis Coplogic Solutions, 3 and it looks like it was signed by the vendor on 4 October 21st, 2019. 5 Were you involved in negotiating this 6 contract? 7 A. In negotiating, no. 8 Q. Were you involved in some other way with this 9 contract? 10 A. Yeah. Without checking, I'm assuming I reviewed this 11 because as a general matter, all contracts come 12 through legal. It would have been either me or -- 13 when was this? Was this 2019? 14 Q. 2019. 15 A. Yeah, so it would have been -- it would have been me. 16 I was the only attorney in the section at that time. 17 It would have likely been me. So if it came to me, I 18 would have reviewed it, and it appears -- my 19 recollection is that I did but... 20 Q. Do you know if there's a request for proposals that 21 was sent out for this contract? 22 A. Yeah. 23 MR. DAMICH: Objection as to foundation. 24 THE WITNESS: Yeah, and I know there's a 25 process for a bid when you do something like this,</p>

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<p>1 that I know went out at some point, but I wasn't 2 involved in the bid process that's not involving 3 contracts. 4 BY MS. AUKERMAN: 5 Q. Okay. The contract set out a variety of 6 specifications for what the the MSOR database is 7 supposed to do. 8 Who decides what those specifications are? 9 A. Well, I disagree what the characterization that it has 10 specifications for what the SOR database is required 11 to do. No. I believe the -- it's specifying 12 proactively what it might be required to do at some 13 point in the future. So if we're going to pay to have 14 this system set up, let's build it in a way that 15 allows us the most flexibility in the event that 16 either the legislature changes what it's required to 17 do or a court changes what it's required to do, or if 18 there's future litigation that requires certain 19 capabilities, and in easing the burden, the hundreds 20 and hundreds of hours have been placed on your staff 21 responding to discovery request, if there's an easier 22 way to compile information. Simply because it's in 23 the bid process being proactive is not a determination 24 by the department that we're going to offer those 25 capabilities to the public, or that we're legally</p>	<p>1 required to do so. 2 Q. Okay. So I guess my question is, you know, basic 3 contract law, right, is that, you know, there's an 4 offer, there's acceptance, there's a contract that 5 specifies what the terms are. Some of these things 6 are listed as optional, and some of them are listed as 7 required. 8 Listed as required, is that something that 9 the vendor is obligated to do? 10 MR. DAMICH: Objection. Asked and answered. 11 THE WITNESS: So, again, it may be something 12 we require with our proactive forward thinking that is 13 not a determination by the department that we have any 14 intention whatsoever of utilizing all those 15 capabilities within the system at any given point in 16 time, nor is it expected to do so. 17 BY MS. AUKERMAN: 18 Q. Okay. Just so I'm clear, though. But basically the 19 vendor has to comply with the contract. That doesn't 20 mean that if the vendor creates capabilities to do 21 certain things, the MSP has to use those capabilities. 22 That's what you're saying, correct? 23 A. Correct. And I'm not aware of during the development. 24 I'm not a computer expert, so they may have contracted 25 to do certain things, but there may be change orders</p>
<p>Page 273</p> <p>1 that came along the lines saying I know you wanted us 2 to do this. We thought we could do it. It turns out 3 we can't, or it's a tremendous expense to do it. 4 There may be other things that came along in 5 the development process that required slight changes 6 in direction. 7 So this is the initial contract that is a 8 scope of work. But much like building a house, you 9 decide to change the countertops halfway through. I'm 10 sure those types of things happen in these types of 11 developments as well. 12 Q. Okay. So there's a bunch of different items listed in 13 this contract as specifications. 14 Who came up with what capabilities one 15 wanted to have in the system? 16 A. Again, I think it would have been that part of the 17 collaborative effort of the vary- -- whether it's -- 18 you know, when I review a contract as a general, I'm 19 not the subject matter expert, so I'm not making a 20 determination as to the subject matter of the 21 agreement, or that it's a good idea that the 22 department enter it or not enter it. I may offer an 23 opinion if asked for if I think it's appropriate. I'm 24 looking at can we legally agree to this contract, is 25 what I'm looking at. So that's my general review from</p>	<p>Page 274</p> <p>1 a legal standpoint. 2 As far as, you know, what do we want to see, 3 this is -- there's a whole -- and I forget what it's 4 called that's a process. There's a term for it of 5 improving state systems and capabilities and a whole 6 BPMB process. They're the procurement people of best 7 practices and those types of things that come into 8 play. And that solicits input from all kinds of 9 people of, hey, if we have a magic wand, we're 10 creating something, what do you think this should do? 11 So there's lots of input that comes in -- 12 Q. Okay. 13 A. -- and so I certainly had some input as did the SOR 14 Unit, the subject matter experts, you know, perhaps 15 even the AG's office with some issues that were taken 16 to them because they're most familiar with the act of 17 litigation and the capabilities they should have. So 18 lots of people have input on what, if we had a magic 19 wand, we want to be capable of doing. That's -- 20 Q. It might help to give you examples here. So let's 21 look at -- we're on page 44 of 101. This talks about 22 the user type and capacity for the system, and it says 23 that there should be capacity for a number of users of 24 9.99 million with a number of concurrent users in a 25 day at 5,000.</p>

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<p>1 Who decided what the user capacity should 2 be? 3 A. To me, that's probably a technical question. So it 4 probably went to the computer experts of what is it 5 reasonable for a system to be able to maintain. 6 Again, I don't have personal knowledge. That's not a 7 legally objectionable provision, but I'm assuming it's 8 based on, hey, if you want this to be able to access a 9 hundred million people, that's a completely different 10 system at a completely different price. So they 11 picked a number regarding access; I suppose. It had 12 to be tied to the technical side of things which I 13 have no personal knowledge. 14 Q. So then let's use another example. This is on page 15 93, Specification 68. It says the "website will map 16 offender addresses for the public and return results 17 of offenders in the user's vicinity, up to 15 miles." 18 Who would have decided that that's something 19 that needs to be included in what the SOR database can 20 do? 21 A. Well, I'd have to go -- I haven't done the comparison 22 to look up the statute, but I think the statute talks 23 about what has to be on the public database. 24 Q. So I can tell you the statute doesn't require a 15 25 mile distance.</p>	<p>1 So who would have decided 15 miles? 2 A. Well, my hunch is that there's some basis, technically 3 speaking, we've all looked for -- I don't know -- you 4 know, a Biggby on a map to grab a cup of coffee, and 5 if you make your map big enough, there's a million 6 dots that you can't distinguish where the next Biggby 7 is. But if you zoom in to a radius, I'm assuming 8 there's some generally accepted practice when you're 9 gonna map in a computerized system to be able to get a 10 spacial assortment to put the -- so that all the 11 little dots that line up mean something. 12 If I just put a map of, you know, the entire 13 state, it would just be covered with dots that offer 14 no value to someone trying to look at it. So, again, 15 it's not required. This is just a system issue that 16 I'm assuming is based on some type of -- you know. 17 Q. Okay. Let's look at specification 70 here, 18 Public-Facing Website. It says: 19 "System shall allow offenders to sign-up 20 and receive email notifications regarding 21 verification reminders or other pertinent 22 information through the public facing 23 website." 24 So do you know who decided that this provision should 25 be included in the contract?</p>
<p>Page 277</p> <p>1 A. No. 2 Q. Or who decided that it should be optional rather than 3 required? 4 A. No. If you want my general direction -- I wasn't 5 involved in the development of the system. I'm not a 6 computer person or anything else. My general 7 direction is to forward think of things that might 8 come in the future or might never come in the future. 9 We've learned of all the limitations on 10 OffenderWatch which you are well aware of when you 11 said, ah, just generate this report, just generate 12 that report, just pull it together, and we couldn't. 13 It would require hundreds of hours compiling the 14 information you wanted. 15 To avoid going through that again, it's 16 thinking of what are all the things that the 17 legislature might do theoretically that could change 18 the way this looks in the future. Forward think, 19 brainstorm, whiteboard, come up with anything that 20 might fit, and then try and develop a system that 21 gives us the most flexibility to adjust, to either 22 change it in the statute or in court opinions. So 23 again -- 24 Q. That was that work group that does the brainstorming 25 and coming up with the specifications for what we</p>	<p>Page 278</p> <p>1 wanted in the database? 2 A. Yes. This seems to be something along those lines. 3 Not that we wanted to make this presently available 4 because we're limited on what can be available to the 5 public on the public-facing website. That's defined 6 by statute. 7 And, you know, regarding notice and 8 reporting, we look to the statute for what our legal 9 requirements are. The fact that we're building our 10 system to give us flexibility to cover future changes 11 in the statute doesn't mean we intend to ever utilize 12 those systems if the legislature never requires us to 13 do so. 14 Q. And it seems like if you want people to comply with 15 SORA, reminders would be helpful, right? 16 I mean, all of us -- you know, I get 17 reminders from my dentist about the appointment I was 18 about to forget. 19 MR. DAMICH: Objection. Speculative. 20 Argumentative. 21 BY MS. AUKERMAN: 22 Q. Is there a reason -- well, let me ask you this. 23 Do you know whether the specification that 24 allows registrants to sign-up and receive 25 notifications and reminders? Do you know if that is</p>

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<p>1 active in the system?</p> <p>2 A. I don't know. I'd be surprised if it is, but I don't</p> <p>3 know.</p> <p>4 Q. Do you know why it was not made active?</p> <p>5 A. Because the statute doesn't require us to do so, if</p> <p>6 that's why it wasn't. My direction is what does the</p> <p>7 SOR require us to do. We do that. Nothing more.</p> <p>8 It's the no good deed goes unpunished.</p> <p>9 When we try and fill in gaps, then that's</p> <p>10 where litigation comes around because someone didn't</p> <p>11 get what we weren't required to give to them in the</p> <p>12 first place, so somehow they were deprived of</p> <p>13 something that others got under the statute. If we</p> <p>14 just stick to what the statute requires us to do, then</p> <p>15 that's the most risk averse appropriate way of doing</p> <p>16 so. The system is designed to give us flexibility</p> <p>17 that if those requirements change in the future, we</p> <p>18 can quickly adapt to properly comply with that change</p> <p>19 in statute. That's the general guidance that was</p> <p>20 provided to develop the system.</p> <p>21 Q. So for example -- and this is on page 53. This is</p> <p>22 Contractor Requirement 11, interface with Michigan</p> <p>23 Department of Health and Human Services. And it says</p> <p>24 that one can create an interface to identify</p> <p>25 registrants who have a Bridge Card, correct?</p>	<p>1 Do you see that?</p> <p>2 A. I see that.</p> <p>3 Q. Do you know if this is something that the system can</p> <p>4 currently do?</p> <p>5 A. No, I don't.</p> <p>6 Q. Are you aware that SOR require registrants to pay an</p> <p>7 annual fee?</p> <p>8 A. I am. Unless during the first reporting period as</p> <p>9 required under the statute if determined to be</p> <p>10 indigent. But, yes, as a general matter, the name</p> <p>11 will be up to a maximum amount, yes.</p> <p>12 Q. And that fee can be waived for 90 days if the person</p> <p>13 is indigent, correct?</p> <p>14 A. Correct.</p> <p>15 Q. And NC is defined in the statute to include people who</p> <p>16 receive food assistance from MDHHS?</p> <p>17 A. That, I don't know.</p> <p>18 MR. DAMICH: Objection. Lack of foundation.</p> <p>19 THE WITNESS: Without reviewing the statute,</p> <p>20 I don't know the answer to that.</p> <p>21 BY MS. AUKERMAN:</p> <p>22 Q. Okay. So there's one design choice that one could</p> <p>23 have made in setting up the system to flag registrants</p> <p>24 who are indigent because they have a Bridge Card,</p> <p>25 correct?</p>
<p>Page 281</p> <p>1 A. Again, did the statute require us to do something with</p> <p>2 respect to the system, if the answer is yes, then the</p> <p>3 system should do that. These other features that are</p> <p>4 in there, again, if it's not required by statute, my</p> <p>5 general guidance would be what does the statute</p> <p>6 require us to do. Let's do that.</p> <p>7 The fact that we're building up a system to</p> <p>8 account for future changes -- and this looks like it's</p> <p>9 optional. I'm not familiar with the specific</p> <p>10 provision, but just 'cause the system can do it,</p> <p>11 doesn't mean MSP can -- you know, needs to use it or</p> <p>12 will use it.</p> <p>13 Q. So let's -- we talked a little bit before about the</p> <p>14 ability about how the Michigan State Police had the</p> <p>15 authority to decide the manner of reporting and about</p> <p>16 the fact that the contract under Specification 77 on</p> <p>17 page 94 provides that the system must allow offenders</p> <p>18 to complete updates through their phone or other</p> <p>19 electronic devices.</p> <p>20 MR. DAMICH: Objection. That misstates</p> <p>21 testimony, but you can continue.</p> <p>22 BY MS. AUKERMAN:</p> <p>23 Q. Ms. Morris testified that this provision of the</p> <p>24 contract has not been -- let me put it this way.</p> <p>25 Ms. Morris testified that the system does</p>	<p>Page 282</p> <p>1 not allow offenders to complete an update through</p> <p>2 their phones or other electronic devices. Is that</p> <p>3 your understanding as well?</p> <p>4 A. Yes. When you say that, you mean the system has not</p> <p>5 been made available for offenders to do that as a</p> <p>6 manner approved by the department? The system may</p> <p>7 very well have the capability to do that, but that's</p> <p>8 not the manner that's been approved by the department</p> <p>9 for registrants.</p> <p>10 Q. Yeah. She testified that the system does not actually</p> <p>11 have that capability.</p> <p>12 A. Okay.</p> <p>13 Q. So my question is if the contract requires that to be</p> <p>14 built into the system, regardless of whether you want</p> <p>15 to use it, but if the contract requires it to be built</p> <p>16 into the system, who decided that Coplogic didn't have</p> <p>17 to comply with that provision of the contract?</p> <p>18 MR. DAMICH: Objection. Lack of foundation.</p> <p>19 THE WITNESS: Yeah. Like I said, any</p> <p>20 development on any project, things change along the</p> <p>21 way. There may have been reasons, but I don't know</p> <p>22 what those are.</p> <p>23 BY MS. AUKERMAN:</p> <p>24 Q. So you don't know if someone at MSP decided, "Hey, we</p> <p>25 don't need this anymore on the contract. Coplogic,</p>

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<p>1 you just don't have to comply with this part of the 2 contract"?</p> <p>3 A. Well, again, I think whether we want to pursue a 4 violation for a breach of contract or a breach has 5 even occurred would be a conversation we'd have with 6 our own attorneys internally, and we would decide 7 whether the breach is material in some way, shape, or 8 form. Whether those discussions happened or didn't 9 happen, I have no idea.</p> <p>10 Q. Do you know if there's a formal modification of the 11 contract?</p> <p>12 A. I'm not aware. I don't recall.</p> <p>13 Q. Let's look at page 52. This is Specification 7.3. 14 This requires an interface between the SOR database 15 and the Secretary of State database so that vehicle 16 registration at the Secretary of State gets 17 pre-populated into the registry database. Do you see 18 that?</p> <p>19 Q. I see it.</p> <p>20 Q. And Ms. Morris testified that this interface has not 21 been created. 22 Do you know if there's such an interface 23 between the MSOR database and the Secretary of State 24 for vehicle information?</p> <p>25 A. No.</p>	<p>1 Q. Do you know whether someone at MSP made a decision 2 that Coplogic didn't need to comply with this contract 3 provision?</p> <p>4 A. Well, I don't know whether it's a not lack of 5 compliance 'cause now you're talking about Michigan 6 State of Secretary information. So it could very well 7 be that we had designs to do this, and we liked it. 8 But when someone reached out to Secretary of State, 9 maybe they said no. 10 So I don't have any position as to -- well, 11 while I appreciate the, you know, diligence in making 12 sure that our contractual rights are being upheld, I 13 would focus on what the registry requires us to do, 14 and are we complying with the statute with regards to 15 the legal requirement. So I have no position as to 16 why this isn't corrected or the reasons why it wasn't 17 or whether it's even capable of doing it.</p> <p>18 Q. Okay. Let's talk about the public website. Now, when 19 the Michigan State Police switched to the new Coplogic 20 system, that changed the public website, correct?</p> <p>21 The way that users see -- what users see 22 when they use the public website.</p> <p>23 A. I know in many ways it still looks similar, but, yeah. 24 It's a new system, yes.</p> <p>25 Q. Do you know what changed?</p>
<p>Page 285</p> <p>1 A. Not offhand.</p> <p>2 Q. Okay. Do you know who was involved in deciding what 3 changes should be made --</p> <p>4 MR. DAMICH: Objection. Foundation.</p> <p>5 BY MS. AUKERMAN:</p> <p>6 Q. -- on the website?</p> <p>7 A. I would say the same internal ad hoc players that we 8 previously discussed coming together, reaching a 9 consensus, and then whatever that consensus is is the 10 decision that was made by the department in that 11 regard.</p> <p>12 Q. Now, whenever you design a website you have to make a 13 variety of different design choices. Is that fair to 14 say?</p> <p>15 MR. DAMICH: Objection. Speculation.</p> <p>16 THE WITNESS: I've never designed a website.</p> <p>17 BY MS. AUKERMAN:</p> <p>18 Q. What's that?</p> <p>19 A. I've never personally designed a website, so I don't 20 know.</p> <p>21 Q. Well, I mean, is it fair to say you have to decide, 22 you know, is the color gonna be -- background color 23 gonna be gray or blue or green?</p> <p>24 A. Yeah. That's style stuff. I would look at it from 25 the standpoint of what does the registry say has to be</p>	<p>Page 286</p> <p>1 on the public-facing website. Does -- whatever it is 2 we're creating, I don't care what the color is. Does 3 it have the information that's required under the 4 statute? And if the answer is yes, then I'm satisfied 5 that the website, regardless of color choice, is 6 legally compliant.</p> <p>7 Q. So your position is that -- if I understand you 8 correctly -- as long as the information required to be 9 posted by statute is on the registry, it doesn't 10 matter what the registry looks like?</p> <p>11 MR. DAMICH: Objection, improper 12 characterization.</p> <p>13 THE WITNESS: Again, from my perspective of 14 this, when I look at some question that's being asked, 15 if the question is what information is expressly 16 required to be on the public website, then that 17 clearly has to be on there. If the statute says 18 certain information is expressly prohibited from being 19 on the website, then I would want to make sure that 20 that information is not publically available.</p> <p>21 I think in and around that, it's some degree 22 of discretion as to how it looks or other information 23 that is not expressly prohibited but makes sense that 24 it's consistent with what we are putting on the 25 website. There may be certain things that fit within</p>

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<p>1 that category as well. But there's things that we are 2 prohibited from putting on the public website, and 3 there's things that are required to be put on the 4 public website.</p> <p>5 If you can point to a specific thing and we 6 want to go point by point on the statute, then I'd 7 have a better idea of what you're talking about.</p> <p>8 BY MS. AUKERMAN:</p> <p>9 Q. So let's take a look at this. This is Exhibit 29. 10 This is the Michigan Sex Offender Registry's initial 11 search page. (Plaintiffs' Exhibit No. 29 was marked.)</p> <p>12 BY MS. AUKERMAN:</p> <p>13 Q. Do you see that?</p> <p>14 A. I do.</p> <p>15 Q. Do you recognize that?</p> <p>16 A. It's been a while since it's been out, but, yeah, it 17 looks familiar.</p> <p>18 Q. Okay. So at the top of the page there's a statement 19 that says: 20 "This registry is made available through 21 the Internet with the intent to better assist 22 the public in preventing and protecting 23 against the commission of future criminal 24 sexual acts by convicted sex offenders."</p>	<p>1 Do you know who wrote that statement? 2 A. I don't. That's just an editorial stylist statement. 3 Who wrote it? I don't -- I don't know. 4 Q. Do you know who decided that it should be on the main 5 search page? 6 A. Well, can you go the introductory section of the Sex 7 Offender Registration Act itself because I think 8 there's some language in there that's along the same 9 lines? The purpose statement of the act, I think 10 there's something along there that -- it may not be 11 verbatim, but it does the same spirit. Again, it's 12 been a while since I looked but... 13 Q. Yeah. I mean, I see that language. I can share it 14 with you if you want, but there's no -- 15 A. Yeah, please do. I'd be interested. In light of the 16 question you asked, please share it. 17 Q. Yeah. I can share that. Give me a second. 18 Do you see that? 19 A. Yes. That's the language I'm thinking of. 20 Q. Okay. So -- 21 A. Just for the record, that's MCL 28.721a that you 22 showed me on the screen, correct? 23 Q. Yes. Yeah, that's correct. 24 So just to be clear, there's not -- you're 25 not aware of anything in the statute that requires</p>
<p>Page 289</p> <p>1 that language to be posted on the registry, correct? 2 A. Requires to be posted, no, but I believe it's entirely 3 consistent with the purpose of the act that created 4 the registry as taken from the purpose statement. 5 Q. So, I mean, you testified before that you -- your 6 general mode of operation is not to do anything that's 7 not required by the statute, but here you have 8 something that's not required that you decided to put 9 on the statute. Is that accurate? 10 A. No, it's not accurate. I think what I testified as it 11 relates to this line of questioning is legally, I work 12 from the standpoint of what's legally required to be 13 on there, the public website, what's prohibited from 14 being on the public website. 15 I think when you said, you know, 16 stylistically who decides what's on there and colors 17 and stuff, certainly, this type of information would 18 fit into that category of a stylistic. I don't have a 19 concern or objection if it's on there, and I don't 20 have a concern or objection if it's not on there. 21 I thinks it's an accurate reflection of the 22 legislature's intent and purpose as stated expressly 23 in the statute, and it's entirely consistent with 24 Michigan State Police in maintaining a registry under 25 that statute. Preferably, if you ask me --</p>	<p>Page 290</p> <p>1 Q. Yeah, I want -- 2 A. -- put the entire purpose statement on the website, 3 but that doesn't really read real well. 4 Q. Yeah. What I'm trying to understand here is who's 5 making the choices behind how the public interacts 6 with the registry. 7 So someone had to make a choice about what 8 is on the home -- the front page, and on the front 9 page here we see two different types -- actually we 10 see five different types of searches that can be done: 11 search the registry, see a neighborhood map, show a 12 list of all published offenders, show a list of all 13 incarcerated offenders, and show a list of all 14 non-compliant offenders. 15 Who made the decision that those are going 16 to be the things that are available on the front page? 17 MR. DAMICH: Objection. Form. Foundation. 18 Compound. Ambiguous. Arguably, it bleeds into the 19 deliberative process privilege as well. 20 THE WITNESS: And I would agree. So the 21 same stakeholders internally that have an opinion, 22 whether -- maybe there's input from the enforcement 23 side, from the SOR Unit side, from legal through the 24 attorney general's office. The same players we talk 25 about get in and deliberate and throw things in and</p>
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<p>1 people add and subtract or suggest. But at the end of 2 the day, a consensus is reached. Are we all good with 3 this being the page?</p> <p>4 Personally, I'll look at it. Is there 5 anything in here that's legally prohibited? Do we got 6 everything I believe we're required? Other than that, 7 is everybody good? Yes. Whatever went into making 8 the software in that situation, the final product is 9 the determination of the department. So who made it? 10 It involved a number of players. It was consensus 11 that that was the right decision to make, and the 12 department's decision is what it is. What you see is 13 the department's decision that was made by the 14 department.</p> <p>15 BY MS. AUKERMAN:</p> <p>16 Q. So the department -- when you talk about "the 17 players," are you talking now again about the attorney 18 general's office or are you -- who were "the players" 19 who were involved in making this decision?</p> <p>20 MR. DAMICH: Objection. Asked and answered.</p> <p>21 THE WITNESS: This, again, when I say 22 "players," it could be in large part or small part. 23 So I can tell you that I was not actively involved in 24 the overall design of the page. I don't believe the 25 overall design of the page at specific -- you know,</p>	<p>1 asked and involved by members of the attorney 2 general's office, the same players.</p> <p>3 It may be through a conversation I had with 4 some of the AG's office of, hey, make sure it's -- you 5 know, did you make sure it has this as required by the 6 statute? And then maybe there was a communication 7 that says, "Hey, does it have this?" That may have 8 originated from some specific place, but at the end of 9 the day, the product is what the product is.</p> <p>10 BY MS. AUKERMAN:</p> <p>11 Q. So, for example, the home page allows the person to 12 click on a list of all non-compliant offenders.</p> <p>13 Are you aware of any information in the 14 statute that requires the MSP to put that on the 15 internet?</p> <p>16 A. I'm not aware of anything that prohibits it.</p> <p>17 Q. Okay. Who made the decision that that would be 18 something that would be available on the home page?</p> <p>19 MR. DAMICH: Objection. Lack of foundation, 20 and also it starts bleeding into deliberative process 21 privilege as well.</p> <p>22 THE WITNESS: Yeah, I don't recall that. I 23 can tell you that when the transition was made from 24 OffenderWatch to the new system, as a general matter, 25 one of the concerns were under OffenderWatch -- well,</p>
<p>Page 293</p> <p>1 let me -- the new system if someone is going to mark 2 somebody as non-compliant, much like someone accessing 3 LEIN or any another protected system. The new system 4 has the ability to track who that person is. So 5 there's accountability.</p> <p>6 If someone is going to mark someone, take 7 the step of saying this person is non-compliant, we're 8 talking about someone who has the authority to do that 9 within the system, then it enables, whether it's SOR 10 staff or a prosecutor's Web. Or if you go to that 11 person if necessary and say what is the basis of this 12 determination 'cause, again, ultimately it's gonna 13 have to be able to demonstrate a willful violation.</p> <p>14 So with the new system, if someone is marked 15 as non-compliant, that is based on the ability of 16 someone who is identifiable making a determination of 17 non-compliance.</p> <p>18 BY MS. AUKERMAN:</p> <p>19 Q. We're getting far afield from my questions which are 20 really about how the -- how decisions are made about 21 what goes on the registry on the public interface.</p> <p>22 So let's look at another document here.</p> <p>23 This is Exhibit 30. This is a map that I pulled off 24 the registry, so I basically mapped .25 miles from my 25 office.</p>	<p>Page 294</p> <p>1 (Plaintiffs' Exhibit No. 30 was marked.)</p> <p>2 BY MS. AUKERMAN:</p> <p>3 Q. Can you see that there are little icons here for 4 different people --</p> <p>5 A. Yes.</p> <p>6 Q. -- who are on the registry?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Do you know who made the decision that that's 9 the way people should be represented?</p> <p>10 MR. DAMICH: Objection. Form and 11 foundation.</p> <p>12 THE WITNESS: Yeah, I don't -- I don't know.</p> <p>13 BY MS. AUKERMAN:</p> <p>14 Q. Okay. So let's look at another one, then, here.</p> <p>15 A. Can you click on one of those, so I can -- I'm sorry.</p> <p>16 Q. You know, I can't do it actively, but I'll show you 17 the next screen does that.</p> <p>18 (Plaintiffs' Exhibit No. 31 was marked.)</p> <p>19 BY MS. AUKERMAN:</p> <p>20 Q. So you can see where we've redacted these documents 21 for the privacy of registrants, but this is 22 Exhibit 31. This is another version of the map. 23 After clicking on one of the tabs of an individual 24 here, you can see that you just click on the tab and a 25 person's face shows up.</p>

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<p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. The statute says that there could be a</p> <p>4 photograph on the website, correct?</p> <p>5 A. I believe so, yes.</p> <p>6 Q. But the statute doesn't require the website to have a</p> <p>7 pop-up picture of a person integrated into a map,</p> <p>8 correct?</p> <p>9 A. Again, I think these questions and decisions -- does</p> <p>10 it expressly say that? No, I don't believe it does.</p> <p>11 But I think a lot of these decisions are made while</p> <p>12 reading the purpose statement that we previously</p> <p>13 identified. Our task, the legislature task, that's</p> <p>14 creating a website consistent with that purpose</p> <p>15 statement. So I think the better question is these</p> <p>16 little added features that are not expressly</p> <p>17 prohibited or expressly required, does it,</p> <p>18 nevertheless, fit within the purpose statement as</p> <p>19 directed by the legislature of what we're supposed to</p> <p>20 do with this registry. And I believe it does.</p> <p>21 Q. So the MSP made a decision that they wanted to have</p> <p>22 pop-up pictures on maps on the public registry,</p> <p>23 correct?</p> <p>24 A. Well, obviously, if that's what the website does, then</p> <p>25 that's the determination that was made.</p>	<p>1 Q. Okay. Let's look at another window. Let me look at</p> <p>2 this individual's registrant page.</p> <p>3 MS. AUKERMAN: This is Exhibit 32.</p> <p>4 (Plaintiffs' Exhibit No. 32 was marked.)</p> <p>5 (At 3:45 p.m., Mr. Jamison joins the</p> <p>6 videoconference.)</p> <p>7 BY MS. AUKERMAN:</p> <p>8 Q. So we look at this individual's registrant page. Do</p> <p>9 you see that?</p> <p>10 A. I do.</p> <p>11 Q. Do you see at the box up at the top there the buttons</p> <p>12 for "Track Offender" and "Map Offender"?</p> <p>13 A. Yes.</p> <p>14 Q. Do you know who decided that those buttons should be</p> <p>15 available on the person's individual page?</p> <p>16 MR. DAMICH: Objection. Form. Foundation.</p> <p>17 And you're starting to, again, tow the line of</p> <p>18 deliberative process privilege.</p> <p>19 Also, for the record, I need to step away</p> <p>20 for a few minutes to go pick up a child. AAG Eric</p> <p>21 Jamison is now online, so he'll be putting forth the</p> <p>22 objections until I return.</p> <p>23 MS. AUKERMAN: Okay. That's fine.</p> <p>24 BY MS. AUKERMAN:</p> <p>25 Q. Okay. Do you see that this entry lists the person's</p>
<p>Page 297</p> <p>1 compliance status?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Do you know if compliance status is something</p> <p>4 that is required by statute to be put on the public</p> <p>5 website?</p> <p>6 A. Without reviewing the act, as far as a specific</p> <p>7 requirement, but, again, I believe it's not prohibited</p> <p>8 and it's consistent with the purpose. And I'm</p> <p>9 comfortable saying that.</p> <p>10 Q. The website also lists the reasons for -- are you</p> <p>11 aware that the website lists reasons for non-compliant</p> <p>12 when a registrant is non-compliant?</p> <p>13 A. I believe so. But as I mentioned previously, when we</p> <p>14 switched to the new system, that system requires the</p> <p>15 identification of the person who makes that mark, so</p> <p>16 there's no ability to anonymously flag someone who is</p> <p>17 non-compliant as someone much like accessing LEIN or</p> <p>18 anyone else. We can track it, and then we can reach</p> <p>19 out if additional information is needed.</p> <p>20 When the switch was made to the new system,</p> <p>21 I think -- I believe that all prior, anyone who was</p> <p>22 marked as non-compliant under the prior system at some</p> <p>23 point in time was simply swept forward as --</p> <p>24 Q. Yeah. Again, we're getting really far afield from my</p> <p>25 question.</p>	<p>Page 298</p> <p>1 So let's -- do you know who made the</p> <p>2 decision that this compliant information would be</p> <p>3 posted on the MSP website?</p> <p>4 A. No. Other than if it's on here, it was the consensus</p> <p>5 decision of the department, and it was the</p> <p>6 department's decision to put this on here.</p> <p>7 Q. Okay.</p> <p>8 MR. DAMICH: Sandra, while she's formulating</p> <p>9 the next question, do you have an idea how long we've</p> <p>10 been on the record so far?</p> <p>11 (From 3:48 p.m. to 3:48 p.m., discussion</p> <p>12 held off the record.)</p> <p>13 (Plaintiffs' Exhibit No. 34 was marked.)</p> <p>14 BY MS. AUKERMAN:</p> <p>15 Q. So let's look at Exhibit 34. These are FAQs that are</p> <p>16 available on the registry website.</p> <p>17 Do you know who wrote these?</p> <p>18 A. I think we've historically had some degree of FAQs. I</p> <p>19 think their SOR Unit, someone there presumably drafted</p> <p>20 them. They may be based on questions that have come</p> <p>21 up over time. And if there were questions about an</p> <p>22 individual, it may have come up for feedback from</p> <p>23 legal. But, again, if that's publicly available,</p> <p>24 that is the department's determination of the</p> <p>25 information we're comfortable sharing as the FAQs.</p>
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<p>1 Q. Okay. And so these FAQs explain things like how to 2 track registrants, how to do geographic searches, how 3 to report someone if you believe they violated SORA, 4 correct?</p> <p>5 A. Correct. This is on the public safety website. 6 Again, it's been a while since I've looked at that, 7 right, but that's...</p> <p>8 Q. So the MSP is not posting FAQs that's designed for 9 registrants, correct?</p> <p>10 A. Well, again, I'm asking. I'm not aware. Is this off 11 the MSP website, or is this the --</p> <p>12 Q. This is off the MSP website, yes</p> <p>13 A. Then we have made a publically available source for 14 information for offenders through our transparency in 15 the public website of the department.</p> <p>16 Q. I'm sorry. So there's no FAQ for registrants, 17 correct?</p> <p>18 A. Yes. If this is publically available, there's an FAQ 19 for registrants.</p> <p>20 Q. This has questions designed for the public, the 21 general public. It does have questions. 22 Does it explain how you can get your fees 23 waived if you're indigent?</p> <p>24 A. Again, we don't give legal advice. So when they -- an 25 offender reaches out, if they were to reach out to us</p>	<p>1 for question, they would be directed to contact their 2 own attorney. The information required to report is 3 on Explanation of Duties which they sign and verify 4 every time they come in.</p> <p>5 Q. Okay. Let's talk about the tools available to law 6 enforcement. 7 Can you list for me what databases are 8 available to law enforcement for investigative 9 purposes?</p> <p>10 A. Nope. I'm not an enlisted member of the department 11 so...</p> <p>12 Q. Does -- let's see. Do members of the department have 13 access to LEIN?</p> <p>14 A. Some do.</p> <p>15 Q. Do members of the department have access to vehicle 16 information like through the Secretary of State?</p> <p>17 A. Some do.</p> <p>18 Q. Do members of the department have access to employment 19 information about people they're investigating?</p> <p>20 A. What database -- what information? Are you talking 21 about publicly available information search? 22 I mean, what information would be -- 23 employment information would you think that we would 24 have access to?</p> <p>25 Q. I'm asking you what kind of information about</p>
<p>Page 301</p> <p>1 employment.</p> <p>2 A. I mean, we have an intelligence operations center, so 3 there's investigative resources that are out there; I 4 suppose. When I represented that, you know, we don't 5 need the database, my source of reference for that 6 actually goes back to a meeting which I believe you 7 were a part of that Major Girotni (phonetic) 8 accompanied me to in these early stakeholder meetings 9 where he made the point quite clear 'cause you kept 10 saying, "Well, we'll leave it as a nonpublic, so that 11 it's accessible for law enforcement use."</p> <p>12 And Major Girotni is one of highest enlisted 13 members of the department. And the chief of staff to 14 the colonel said, "The Michigan State Police does not 15 need the database to do our job. So please stop 16 looking out for our interest that we need the database 17 to do our job."</p> <p>18 That was the source of my statement that we 19 don't need the database to do police work.</p> <p>20 Q. Okay. I want to talk a little bit about other sources 21 of criminal history information.</p> <p>22 MSP also makes criminal history information 23 available to the public through the internet criminal 24 history access tool ICHAT. Is that right?</p> <p>25 A. Some. Yes, some criminal.</p>	<p>Page 302</p> <p>1 Q. And that's not limited to sex offenses, correct?</p> <p>2 A. Correct. It's limited to fingerprint-based publically 3 available conviction information.</p> <p>4 Q. Okay. And it provides arrest and charge information, 5 correct?</p> <p>6 A. For fingerprint-based arrest, charge, conviction 7 information that is otherwise publically available, 8 yes. Michigan, yes.</p> <p>9 Q. And there's a cost to access that, correct?</p> <p>10 A. I haven't looked on the website in a while, but I 11 assume there is. I know there's provisions for 12 nonprofits and other entities to be able to get access 13 to certain information.</p> <p>14 Q. And then the Michigan Department of Corrections has a 15 website called Offender Tracking Information System, 16 OTIS; is that right?</p> <p>17 A. I believe so.</p> <p>18 Q. Okay. And that provides criminal history information 19 about people who or have been under the jurisdiction 20 of MDOC; is that right?</p> <p>21 MR. DAMICH: Objection. Lack of foundation.</p> <p>22 THE WITNESS: I don't have personal 23 knowledge. I know that I've personally have searched 24 OTIS, but I don't think that's a system we maintain. 25 I think it's their system processing their offenders</p>

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<p>1 as they come in, and they're putting their publically 2 available information on their public website.</p> <p>3 BY MS. AUKERMAN:</p> <p>4 Q. When you searched it, has there been a charge for you 5 to search it?</p> <p>6 A. For...</p> <p>7 Q. I mean, is it free to use?</p> <p>8 A. OTIS, yeah. I don't recall a charge for using OTIS. 9 But, again, those are offenders who are actively or 10 previously under the jurisdiction of the Department of 11 Corrections.</p> <p>12 Q. Okay. And it has photographs, correct?</p> <p>13 A. It's been a while since I've done it, but I believe 14 so, yes.</p> <p>15 Q. And you can do a name-based search, correct?</p> <p>16 A. It's been a while since I used it, but presumably, 17 yes.</p> <p>18 Q. And it's not limited to sex offenses, correct?</p> <p>19 A. Again, I don't know what it's limited to. That's 20 their system.</p> <p>21 Q. The registry has a mapping function where you can put 22 in your address and pull up information about 23 registrants in your area.</p> <p>24 Do you know if you can do that on ICHAT?</p> <p>25 A. I -- I don't think so, but I don't know.</p>	<p>1 Q. Do you know if you can do that on OTIS?</p> <p>2 A. I don't know.</p> <p>3 Q. Okay. Does Michigan have laws that require background 4 checks for people working in particular fields such as 5 childcare?</p> <p>6 A. To my understanding, yes.</p> <p>7 Q. Does Michigan have a workforce background check 8 program that provides for comprehensive finger-based 9 (sic) background checks in certain jobs that involve 10 children and the elderly?</p> <p>11 A. I don't believe so. I'm not positive. I mean, I know 12 there's all kinds of different alphabet acronyms for 13 different things and different systems and different 14 checks. But I'm aware that there are statutes that 15 allow for background checks for certain areas of 16 businesses, and, presumably, there's a process for 17 doing that.</p> <p>18 Just like us as attorneys, we go get 19 fingerprinted, and we get our background check done, 20 right. There's limitations on when you can access 21 criminal justice information, and so any access to 22 criminal justice information is defined under the CJIC 23 policy, and the CJIC's administrative rules would be 24 dictated by those rules.</p> <p>25 Q. Okay. And the public can also do private background</p>
<p>Page 305</p> <p>1 checks, correct, through a private background check 2 company?</p> <p>3 A. I would suppose. I mean, whoever is accessing -- a 4 background check can include different types of 5 information. So if it's CJIC, C-J-I-C --</p> <p>6 Q. Publicly available criminal history information?</p> <p>7 A. Yeah. Yeah, I guess. I have no reason to dispute 8 that.</p> <p>9 MS. AUKERMAN: Okay. Let's take a five- or 10 ten-minute break.</p> <p>11 THE WITNESS: If you're close to being done, 12 I'd just assume keep going.</p> <p>13 MS. AUKERMAN: I just need a minute to 14 determine if I have any further questions, so we're 15 going to take a five-minute break.</p> <p>16 (From 3:56 p.m. to 4:00 p.m., recess was 17 taken.)</p> <p>18 BY MS. AUKERMAN:</p> <p>19 Q. I just have a couple of last questions. So you've 20 talked a lot today about how the Michigan State Police 21 simply maintains their registry and isn't responsible 22 for determinations under the statute.</p> <p>23 I wanted to look at -- go back to Exhibit 8.</p> <p>24 I'll share my screen with that. Do you see that?</p> <p>25 A. Not yet.</p>	<p>Page 306</p> <p>1 Q. Do you see it now?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. So this is the SOR operating procedure for 4 pending review cases that we talked about earlier, 5 SOR-OP-315, and it describes what the procedures are 6 that the SOR Unit takes when a new registration comes 7 in.</p> <p>8 Do you see under offenses that it says, 9 "Confirm the offense is one that requires registration 10 under the Sex Offender Registration Act"?</p> <p>11 A. Yes.</p> <p>12 Q. So that is a step that they take in the process of 13 registering individuals, correct?</p> <p>14 A. Clarify is that I previously testified I wasn't 15 familiar with this procedure or process. But when I 16 say the MSP is not making the determination, that 17 doesn't mean we're not making our own responsibilities 18 to maintain the registry and put people where we think 19 that they reasonably should be.</p> <p>20 What I'm talking about determination is to 21 the extent someone looks to MSP and says, "Well, MSP 22 says I have to register," or "MSP says I don't have to 23 register," that is not a deter- -- and that's somehow 24 legally binding one way or the other, that's not MSP's 25 responsibility. It's the registrant's obligation to</p>

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<p>1 comply with the act.</p> <p>2 We do our best to maintain a registry, and</p> <p>3 in that effort, we make our determination to do that</p> <p>4 to the best of our ability. Whether someone -- as</p> <p>5 I've mentioned previously on several occasions, even</p> <p>6 if we tell someone they don't have to register, they</p> <p>7 could still be successfully prosecuted for violating</p> <p>8 the act if a willful violation is demonstrated,</p> <p>9 regardless of your opinion.</p> <p>10 That's the point I'm making when I say we</p> <p>11 don't make determination. It's not a defense for a</p> <p>12 registrant to say MSP said I don't have to register,</p> <p>13 so this prosecutor has no authority to prove a willful</p> <p>14 violation. That's simply not true. The prosecutor</p> <p>15 gathers evidence, presents it, and then demonstrates a</p> <p>16 willful violation regardless of what our opinion is.</p> <p>17 Q. You talked earlier about how determinations about</p> <p>18 whether someone needs to register are made at the time</p> <p>19 time of sentencing, and I wanted to show you the</p> <p>20 judgment, just a standard judgment of sentence that's</p> <p>21 used in Michigan Courts.</p> <p>22 MS. AUKERMAN: This is Exhibit 35.</p> <p>23 (Plaintiffs' Exhibit No. 35 was marked.)</p> <p>24 BY MS. AUKERMAN:</p> <p>25 Q. Do you see that?</p>	<p>1 A. If you can scroll down, so I could see. I don't</p> <p>2 see -- normally I would see the issue date.</p> <p>3 Q. This is Form MC 219.</p> <p>4 A. Yeah, but normally somewhere on these forms, the SCAO</p> <p>5 has a date of which the form was created or valid,</p> <p>6 right. And usually -- I could have sworn it was at</p> <p>7 the top, but usually there's something.</p> <p>8 Q. This is one I just pulled off while we were talking.</p> <p>9 A. Okay. Maybe they stopped doing it.</p> <p>10 Q. It shows that it was revised 6/23?</p> <p>11 A. There we go. That's what I'm looking for.</p> <p>12 Q. Okay. And do you see here under No. 5 there's a box</p> <p>13 for "sex offender registration is required and has</p> <p>14 been completed"?</p> <p>15 A. I do see that.</p> <p>16 Q. Okay. So this is something that is on the judgment of</p> <p>17 sentence, correct?</p> <p>18 A. Yeah, I -- this has been revised June 23rd (sic), so</p> <p>19 this is the first I'm seeing it. I'm familiar with</p> <p>20 the form generally. I'm not sure if there are</p> <p>21 specific differences between this and the previous</p> <p>22 edition. But, yes, I would say that's consistent with</p> <p>23 the statute.</p> <p>24 Q. So this is what you were talking about before when you</p> <p>25 said that whether or not a person has to register is</p>
<p>Page 309</p> <p>1 decided in the criminal case as part of the sentence?</p> <p>2 A. For a Michigan conviction what I said was the -- SOR</p> <p>3 talks about the registration requirements. It says</p> <p>4 the probation officer "shall" initiate the</p> <p>5 registration process. It says the court "shall" make</p> <p>6 the determination on registration prior to upholding</p> <p>7 sentence, and that the registration must be completed</p> <p>8 prior to the execution of sentence.</p> <p>9 So this, I think, reflects the court's</p> <p>10 ensure -- certifying are ensuring that that statute</p> <p>11 was complied with. SOR also says that prior to</p> <p>12 sentence, the registrant themselves had guaranteed a</p> <p>13 right to have a hearing in front of a judge to</p> <p>14 determine, hey, I don't have to register, or I</p> <p>15 shouldn't have to register. They're guaranteed that</p> <p>16 right prior to sentence, and the court is required to</p> <p>17 offer due process an opportunity to be heard to make</p> <p>18 that determination before ever checking that box.</p> <p>19 Q. What statute are you referring to there?</p> <p>20 A. Pardon me?</p> <p>21 Q. What statute are you referring to there?</p> <p>22 A. The -- it's the SOR itself. It talks about -- I</p> <p>23 forget what specific section, but it talks about prior</p> <p>24 to sentence, the probation officer "shall" register,</p> <p>25 and the court "shall" impose registration prior to</p>	<p>Page 310</p> <p>1 sentence. And the hearing process is at the front</p> <p>2 end. I believe it was part of the 2011 amendments</p> <p>3 that says --</p> <p>4 Q. Are you referring to the hearings in consent cases, or</p> <p>5 just about the consent?</p> <p>6 A. Yes, that's one as far as consent, yes.</p> <p>7 Q. But are you aware of any provisions for hearings in</p> <p>8 general?</p> <p>9 A. Again, that's a -- the statute says, you know, upon</p> <p>10 conviction a person shall register for these offenses.</p> <p>11 It creates a process that they believe there's a basis</p> <p>12 not to register, so they're guaranteed the protection</p> <p>13 to make sure they fall within and can have that</p> <p>14 exclusion adjudicated even over the objection of a</p> <p>15 prosecutor and -- but if it doesn't fit within that,</p> <p>16 then the statute speaks for itself.</p> <p>17 Q. Okay.</p> <p>18 A. A person convicted of this offense shall be the</p> <p>19 following. I don't think you have any right to a</p> <p>20 hearing for that. It's like saying I have a right to</p> <p>21 a hearing as to whether the judge can send me to</p> <p>22 prison on a felony firearm because the statute says,</p> <p>23 if convicted, you're going for two years consecutive.</p> <p>24 I don't think you'll get a hearing on that.</p> <p>25 It's pretty clear what's going to happen, and the</p>

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<p>1 statute is pretty clear. If you're convicted of these 2 listed offenses as defined in the statute, you have an 3 obligation to register, and the court has to make sure 4 that occurs before --</p> <p>5 Q. So there's no hearing that the statute requires -- 6 clearly provides for registration. Is that what 7 you're saying?</p> <p>8 A. Again, I think the statute speaks for itself. If 9 registration is required, it has to be part of a 10 judgment of sentence.</p> <p>11 Q. Okay. Looking --</p> <p>12 A. If it's not part of the judgement of sentence, then I 13 believe there's a period of time which even if it was 14 required, you can't require it.</p> <p>15 Q. I just want to make sure we get through this. 16 So the judgment of sentence that I'm showing 17 you, it indicates a sex offender registration is 18 required. Does it indicated what tier the person is 19 on? It doesn't; does it?</p> <p>20 A. No, but we've got 15 years to figure out if it's the 21 right one; I suppose.</p> <p>22 Q. Right. But that's not a determination the court is 23 making, correct?</p> <p>24 A. Again, it's the reg- -- you have the obligation to 25 register. The offense is for a Michigan listed</p>	<p>1 offense. I think we're pretty clear as to where those 2 tiering falls if it's a Michigan listed offense 3 because the statute says a person convicted here is 4 Tier I. A person convicted of this is Tier II, and so 5 on. So the statute is pretty --</p> <p>6 Q. What I'm trying to clarify, Mr. Beatty, is that you're 7 saying that these determinations are not made by the 8 Michigan State Police, and that probation and others 9 are responsible for registration.</p> <p>10 Does probation determine what a person's 11 tier length is?</p> <p>12 A. No. The statute does.</p> <p>13 Q. The statute does, but that is something that the 14 Michigan State Police in the process of registering 15 people identifies what you -- the Michigan State 16 Police believes to be the correct tier determination, 17 correct?</p> <p>18 A. We read the statute. When it says this conviction of 19 this offense requires this tier level registration, 20 and maintaining a registry is required by the statute, 21 that's the tier that pops up on the computer.</p> <p>22 This is really straightforward. I don't 23 think -- I think anyone who can read, write, and 24 understand the English language can point to this is 25 what is I was convicted of. Where does it say I have</p>
<p>Page 313</p> <p>1 to register? Oh, there's that citation. It says I'm 2 a Tier I, or a Tier II, or a Tier III. And then I can 3 look at the explanation of reporting duties based on 4 that tier, and do what I'm required to do. 5 (At 4:09 p.m., Mr. Damich rejoins the 6 videoconference.)</p> <p>7 BY MS. AUKERMAN: 8 Q. So the Michigan -- 9 A. -- that says I disagree with the statute for getting a 10 hearing, yeah, I think that's ridiculous. 11 MS. AUKERMAN: Okay. I think I'm done. 12 Thank you. 13 MR. JAMISON: Okay. Sandra, do you have the 14 time? 15 THE REPORTER: Yeah. It was -- including 16 our breaks, it was six and a half hours, and then we 17 were on the record for another ten minutes just right 18 now. 19 MR. JAMISON: Okay. Miriam, do you have any 20 reason to dispute her math there? 21 MS. AUKERMAN: Let me just check. I know 22 Dayja has been keeping time. 23 Dayja, does that sound right to you? 24 MS. TILLMAN: Yeah, that sounds right to me. 25 MS. AUKERMAN: So it's about 20 minutes</p>	<p>Page 314</p> <p>1 left? 2 MS. TILLMAN: Um-hmm. 3 MR. JAMISON: And then my understanding is, 4 Miriam, that you reserved the right to -- or you 5 reserved the -- or you left the deposition open. 6 What areas are you leaving the deposition 7 open for? 8 MS. AUKERMAN: I'm gonna have to go back and 9 look at my notes on that, but there were -- I can send 10 you an email afterwards about that. 11 MR. JAMISON: Okay. 12 THE WITNESS: I'm happy to take a break now 13 if she wants to review her notes and make a record of 14 what areas rather than come back at a different time. 15 I'm good if we need another ten minutes for her to 16 review her notes and decide what areas. 17 Eric, you weren't part of the earlier part 18 of deposition, but I would like that to be stated now. 19 MS. AUKERMAN: Do you guys have any 20 questions? 21 MR. DAMICH: I have no follow up. 22 MS. AUKERMAN: Okay. Then we can take a 23 minute and go off the record again. 24 MR. DAMICH: Okay. 25 (From 4:11 p.m. to 4:16 p.m., recess was</p>

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1 taken.)
2 MS. AUKERMAN: Just for the record, the two
3 areas where we're keeping the deposition open.
4 There's another -- there are other depositions
5 scheduled with respect to 30(b)(6), but with respect
6 to the topics covered in this deposition, the ones
7 that we are keeping open are the determinations
8 regarding out-of-state individuals and their
9 classification to Mr. Beatty's unwillingness to answer
10 questions with respect to examples of out-of-state
11 classification decisions.

12 And then the second area is despite repeated
13 requests, we were not provided with final copies of
14 the letters with respect to Lymon. Mr. Beatty stated
15 that he was not sure if those were final copies, and
16 that, obviously, affected the questioning in that
17 area. So we'll have to determine once we receive the
18 final letters whether we need to revisit that issue.

19 MR. DAMICH: All right.

20 MS. AUKERMAN: Okay. Go off the record.
21 (At 4:17 p.m., the deposition concluded.)

22 //
23 //
24
25

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1 STATE OF MICHIGAN)
2) ss:
3 COUNTY OF OAKLAND)
4
5 I, Sandra Apley, Certified Shorthand
6 Reporter, a Notary Public acting for the County of
7 Oakland, State of Michigan, do hereby certify that the
8 testimony of STEVE BEATTY, whose attached deposition
9 consisting of 317 pages, was taken before me in the
10 above-entitled matter and was by me duly sworn at the
11 aforementioned time and place; that the testimony was
12 stenographically recorded in the presence of said
13 witness and afterwards transcribed by computer under
14 my personal supervision; and that the said deposition
15 is a full, true, and correct transcript of the
16 testimony given by the witness.
17 I further certify that I am not connected by

I further certify that I am not connected by blood or marriage with any of the parties or their attorneys, and that I am not an employee of either of them, nor financially interested in the action.

Sandra Apley, CSR-8838 6
Call back from Mobile

Oakland County, Michigan
Michigan 86

My commission expires: 06

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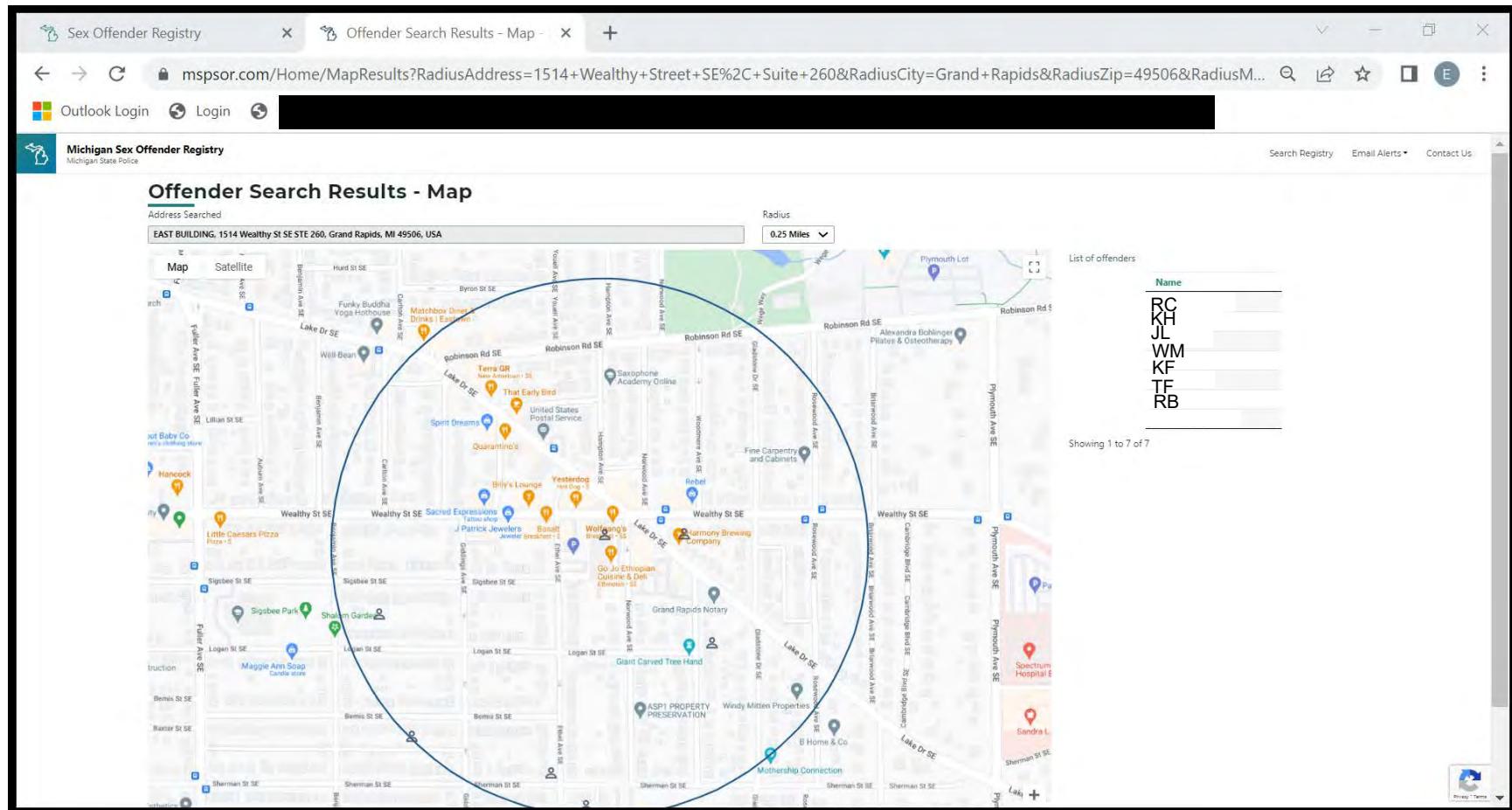
24 Completed and signed: June 20, 2023

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Steve Beatty Deposition Exhibit 30

NEIGHBORHOOD SEARCH



Steve Beatty Deposition Exhibit 31

Neighborhood Search – Registrant

Sex Offender Registry Offender Search Results - Map mspsor.com/Home/MapResults?RadiusAddress=1514+Wealthy+Street+SE+260&RadiusCity=Grand+Rapids&RadiusZip=49506&RadiusMiles=0.25

Outlook Login Login

Michigan Sex Offender Registry Michigan State Police Search Registry Email Alerts Contact Us

Offender Search Results - Map

Address Searched: EAST BUILDING, 1514 Wealthy St SE STE 260, Grand Rapids, MI 49506, USA

Radius: 0.25 Miles

Map Satellite

Showing 1 to 7 of 7

Offender Details:

Name: RC
KH
JL
WM
KF
TF
RB

Address: EAST BUILDING, 1514 Wealthy St SE STE 260, Grand Rapids, MI 49506, USA

Age: 60

View Details

Map showing the location of the offender at 1514 Wealthy St SE STE 260, Grand Rapids, MI 49506, USA. The map displays a radius of 0.25 miles around the address, showing various local businesses and landmarks. The offender's location is marked with a blue dot and a photo. The map includes street names like Wealthy St SE, Robinson Rd SE, and Lake Dr SE, as well as landmarks like the United States Postal Service and Saxophone Academy Online.

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Registry

Sex Offender Registry Offender Details - Michigan Sex Offender Registry

mspsor.com/Home/OffenderDetails/98cef42-24e1-4613-8820-06b8f449b368?RadiusAddress=1514+Wealthy+Street+SE%2C+Suite+260&RadiusCity=

Outlook Login Login [REDACTED]

Track Offender Map Offender Submit a Tip



Registration Number: [REDACTED]
MDOC #: [REDACTED]
Status: Active
Age: 68 (DOB: [REDACTED] 954)
Last Verification Date: [REDACTED] 2023
Compliance Status: Compliant

Sex: MALE
Race: WHITE
Hair: BROWN
Height: 5' 5"
Weight: 160 lbs
Eyes: BROWN

Photo Date: 06/07/2022

Addresses Aliases **Offenses** Scars/Marks/Tattoos Vehicles

750.520D1B - CRIMINAL SEXUAL CONDUCT 3RD DEGREE (FORCE OR COERCION)

Date Convicted: [REDACTED] 1992
Conviction State: Michigan
County: BARRY
Court: 05TH CIR COURT (BARRY)
Counts: 1
Details:
Attempted: No

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